



1987

## Transcript of Proceedings of the Eighty-Seventh Annual Meeting of the North Dakota State Bar Association

North Dakota State Bar Association

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### Recommended Citation

North Dakota State Bar Association (1987) "Transcript of Proceedings of the Eighty-Seventh Annual Meeting of the North Dakota State Bar Association," *North Dakota Law Review*. Vol. 63 : No. 3 , Article 4. Available at: <https://commons.und.edu/ndlr/vol63/iss3/4>

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**TRANSCRIPT OF PROCEEDINGS  
of the  
EIGHTY-SEVENTH ANNUAL MEETING  
of the  
NORTH DAKOTA STATE BAR ASSOCIATION**

**Grand Forks, North Dakota  
June 11-12, 1987**

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**OFFICERS**

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DAVID PETERSON .....	Immediate Past President
CARLA KALUZNIAK SMITH .....	Secretary-Treasurer
LES TORGERSON .....	Executive Director

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**Thursday  
June 11, 1987**

(Whereupon, the proceedings commenced at 9:41 A.M. as follows:)

PRESIDENT JOHN E. WIDDEL, JR.: Could I have your attention, please? I would like to call the General Assembly of the State Bar Association of North Dakota to order, the 1987 meeting.

At this time we will have the presentation of colors and the National Anthem by the Veterans of Foreign Wars Post 1386 Color Guard. Please rise.

Would you remain standing for the invocation by J. Phillip Johnson?

MR. J. PHILLIP JOHNSON: Let us pray. Lord, God of our Fathers, it was two centuries ago that a small, but enlightened, group gathered at Philadelphia in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty for themselves and their posterity. While we may not share their foresight, we must share their concern for an orderly and just society. Help us, Lord, God of Washington, Madison, Jefferson and Franklin, help us to see the yet unfinished vision. Help us find strength to support, help us find vision to defend a government of laws and not of men. Help us to assure that government of the people, by the people, for the people may not perish from this earth. In your name and for your people, we pray. Amen.

PRESIDENT WIDDEL: Thank you, Phil.

At this time we will have a welcoming to the City of Bismarck by a member of our Association and also a City Commissioner, Bill Delmore.

MR. WILLIAM J. DELMORE: Thanks, Jack. I was going to give a welcome. But something happened last night that you might be able to use in your practice. Maybe you could help me with regarding advice. I once had a law professor who defined "act of God" as that which a reasonable God would never do. And I have a definition for you or a story that may help you define "offer of proof." Last night about 3:00 in the morning I got a call from Ole Olson. I don't know if you know him. You probably missed him. The Bismarck Tribune switched over from afternoon to morning there were a couple stories that got lost. But he won a contest to go to California to be on that quiz show that gets a lot of attention. Last night the phone rings, it's 1 o'clock in California. Ole says, "Bill, I have got real problems. Do they do things differently in California?" I told him I hadn't been there in a while, but indeed they do. He says, "Is the truth here the same as the truth there?" I said, "Occasionally it's slightly different." He said, "Well, I was at a hearing you were doing once and I saw somebody do something called an 'offer of proof.'" I'm surprised he had been there. I didn't see him. I said, "Yes, that happens." He said, "Well, if they don't take my offer of proof in California is there something I can do?" By then I woke up and I said, "Ole, maybe you could explain to me what happened." He says, "Well, I got on this quiz show. And I was sitting way on the left. Way on the right was this man from Texas. Next to him was this woman from California. And they told me the rules where you get two misses and then you are off the show. Each of them had vun miss. The first question they asked was a question where you filled in the word and spelled it. And the question was Old McDonald had a blank. I knew I was gonna get the answer. But they started with the guy from Texas. And he says, "Old McDonald had a ranch, r-a-n-c-h." And the buzzer goes "Buzz!" And I know he's gone. Then they get to the woman from California. She says, "Old McDonald had a condo, c-o-n-d-o." She's gone. I knew I was gonna win the big prize. I go, "Old McDonald had a farm, E-I-E-I-O." It goes "Buzz!" I got vun miss. He says, "Now you are the only contestant left, Mr. Olson. You take one draw. You take the draw." I answer one question. He says, "You have got the easiest question in the whole box." He said, "Your question is name two of Santa's reindeer." I figure I got this one. That was easy. I said, "There is Rudolph and Olive." And the buzzer goes "Buzz!" And I remember that hearing. And I say, "I got a offer of proof. I got a offer of proof." He said, "Mr. Olson, apparently you know our rules. If you can prove that you answer is right we will allow you to go on." He said, "Your proof, please." I went, "Rudolph the red nose reindeer, he had a very shiny nose. And if you ever saw it you would even say it glows. Olive the other reindeer. . . ." So maybe you can advise me what to do when I call him back later today.

On behalf of the City I want to welcome you to Bismarck. Actually my prime purpose here is to encourage you during your leisure times to eat in our city, spend a little money. If you have too good a time and feel guilty don't hesitate to buy a present to take home. But on behalf of the Mayor and the whole city, we welcome you here. We hope you come here again and again. Enjoy your time. Thank you.

(Applause.)

PRESIDENT WIDDEL: Thank you, Bill.

We also have a welcome by the Burleigh County Bar President, Merle Pederson.

(Applause.)

MR. MERLE T. PEDERSON: Good morning. Welcome to Bismarck. You know, like any city in the state Bismarck is always pleased when a large convention comes to town, especially when it's a convention of affluent, well-behaved professional people who bring their spouses to town and take part in the trade of the city. And that's why we're especially pleased this morning that the North Dakota Optometric Association is meeting here next week. But, seriously, we're very pleased to have you here with us. And we hope you enjoy your stay.

I hope everyone or I hope many of you took part in the reception last night out at Apple Creek. Very nice time meeting old friends. I was in a group. Our conversation got around to discussing the Contra-Aid hearings that have been going on in Washington, D.C., and the troubles of Colonel North and Fawn Hall and some of the issues relating to criminal defense issues relating to immunity from prosecution that have been raised there. And it reminded me of a client that I had when I was practicing law up in Cavalier, North Dakota in the northeast corner of the state near the Minnesota border. I had a client. His name was Ole as well. And he was from Minnesota, just across the border. And he came into our office one day and he told me that the Sheriff had been to see him last weekend. And the Sheriff said to Ole, "Ole, I received an alarming report that you recently shot a loon." And of course it's illegal to shoot loons in Minnesota. That's the state bird. And Ole said, "No, Sheriff, I didn't shoot a loon. I'd never shoot a loon, Sheriff." The Sheriff said, "Well, we have it on good information that an eyewitness saw you shoot this loon. And you used that shotgun right there sitting in the corner." And Ole vehemently denied this. And he invited the Sheriff to search his farmhouse and the farmstead. If he could find any evidence of the loon, to find evidence of the loon. So the Sheriff did that. A couple of hours later the Sheriff comes back to Ole who's still sitting at his kitchen table drinking coffee, and he said, "Ole, I wasn't able to find any evidence of a loon, or a dead bird of any kind for that matter, on the place. So I'm not going to proceed any further with my investigation. But I would like to know just for my own satisfaction did you or did you not shoot a loon. We're not going to give you a ticket. You won't be in court over this. You have immunity." And Ole says, "I won't get a ticket?" Sheriff said, "No." "Yeah. Yeah, I shot a loon last week." And the Sheriff said, "Well, what did you do with the loon? I can't find it anywhere." And Ole said, "Well, I ate it for dinner." And the Sheriff kind of wrinkled up his nose and says, "Well, that sounds awful. What does a loon taste like?" And Ole said, "Now you are not going to give me a ticket Sheriff, right?" "No. No ticket, Ole." "Well, a loon sort of tastes like a cross between a whooping crane and a bald-headed eagle." Ole was safe.

So the Annual Convention is a great time to get together and share stories. I hope you all enjoy your time here and have a good time reminiscing about some old times, relax and enjoy each other's company, and pick up some professional education. We're very happy to have you. Thank you.

(Applause.)

PRESIDENT WIDDEL: This must be a time for stories. I also have a story. In my various travels this year I found in many of the cities there's a certain person that may have a little more clout than some of the other people. And the other day Les and I were over in Mandan. We were driving down the street. And Les went right through a red light. And I mentioned quietly, "Watch out." And he looked at me and he said, "Oh, don't worry. Kautzmann told me it's okay." So we went down the street. And he went through another red light. And I said, "Les, you are going to get in trouble over here." He said, "No, don't worry. Dewey said it was all right." He said, "Don't sweat it." Next light we came to was green. He stopped carefully. Looked both ways. And I said, "Now what is going on here?" "Well," he says, "Dewey may be comin'."

Next agenda on the program is the President's message. I wish to focus on some important issues and some recent events, the progress of the Association this year.

One of the goals that it was my intention to stress this year was an emphasis on professionalism. According to

Dean Ross Company "professionalism" is a term that refers to a group pursuing a learned art, has a common calling in the spirit of public service, no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art and the spirit of public service is a primary purpose. In one of the President's reports in The Gavel I wrote an article on professionalism and reported that the ABA Commission on Professionalism stressed a number of areas. Two of the areas were devotion to public interest and a need to educate the public. As this was a legislative year it was important to us as professionals acting through the Board of Governors and the Association that prompt and informed consideration be given to the many bills proposed in the legislature this year. We had a duty to serve the public and also to educate the public. The Board of Governors instituted a procedure where all bills presented were reviewed by our Bar Executive, Les Torgerson, with copies of selected bills which concerned the Association forwarded to the Association Legislative Committee and the entire Board of Governors. The bills were considered either at scheduled monthly meetings of the Board of Governors or were considered in conference telephone calls. Time was of the essence in some of these matters. The matters were in and out of the committees at the legislative area in just a matter of days. And we had to take positions in these matters. Positions were taken on certain bills after debate and vote by the Board of Governors. And these matters were debated at length and some of the votes were very close. Care was taken to inform the Legislative Committees that our Association position was not presented as being unanimously supported by our members, but was the position of the Board of Governors representing the Association.

As a whole, the efforts of the Board of Governors on behalf of the Association provided information and positions on various bills to assist the legislators to make an informed committee recommendation to the assembly as a whole. Some of the more important bills this session considered were imposing sales tax on professional services, court reform, Uniform Marital Property Act, and the Intermediate Appellate Court. A number of the legislators have expressed their appreciation to the Association for the information that we provided both in written form and in having witnesses appear and the fact that the Association did take a position on the issues. Some members of the Association have expressed concern about the actions taken by the Board of Governors this past year. The discussion and debate within the Board of Governors and the discussion and debate within this Association is healthy for our group. We need that. The Board of Governors need that in order to present a position for our profession in the future. As members of the North Dakota Bar we can be proud of the progressive ideas and procedures which are present in our Association, such as the formation of the Attorneys' Liability Protection Society which offers an important option to the attorneys of this state in this time of liability insurance crisis. The ALPS plan is an important alternative to the attorneys of our state and the protection of our clients. Information on the ALPS plan will be provided later in the program and during the entire Assembly meeting in the courtyard in the area outside of the hall. There will be a booth there for the ALPS information. The IOLTA plan, Interest on Lawyers' Trust Accounts, which is in the process of implementation, will provide financial assistance to the North Dakota Bar Foundation for future years. As professionals it is critical that we support the Foundation and its program.

Our Association by its action last year in adopting the new Rules of Professional Responsibility in North Dakota require higher standards of professionalism. These Rules will provide guidelines for the practice of the law in the 1980s and illustrate the progressive posture of our Association.

In an effort to promote greater communication and understanding joint meetings between the Board of Governors, the Supreme Court Justices, and the District Judges have been scheduled and are being planned in the future.

The Young Lawyers' Section of the Association has been reactivated this year, chaired by Carla Kaluzniak Smith. Bylaws have been adopted and a grant has been received from the Affiliate Outreach Project of the ABA Young Lawyers' Division. This grant will be used by the Section to produce a Farmers' Information Booklet which covers farm foreclosures. The project completion date is set for March 19th, 1988. Because of activities such as this farm program and many other opportunities I encourage all young lawyers in North Dakota who have not reached their 36th birthday, or have been in practice for five years or less, to become active in the Young Lawyer's Section. The Guidelines on Professionalism stress also participation in pro bono work or increased participation. This year three groups or committees have been consolidated. They are our own Bar Association Legal Services Committee, the Supreme Court Committee, and the Legal Assistant Program of North Dakota. These three groups have been consolidated into one Joint Civil-Legal Service Organization to provide more effective and efficient pro bono assistance for North Dakota.

I have been fortunate this year to work with the Bar Association staff. And the success of our Association this year is a result of their work and the excellent administration of the Association business. Our Executive Director, Les Torgerson, and Assistant Director Sherry King, deserve special recognition for their dedication to this Association.

Efforts were made this year to redesign The Gavel publication of the Association and The Note Pad. The result achieved by Communications Director Penny Miller Barry has made The Gavel an improved and more informative publication. The redesigning of The Gavel and The Note Pad have made it possible to present better publications to our members without a significant increase in cost.

The Bar Association staff has placed in service a new computer this year to better serve the members, the staff and the increasing needs of the North Dakota Bar Foundation and the Continuing Legal Education Committee.

This has been a challenging year, a year of increased professionalism within our Association. I sincerely appreciate and thank the members of the Association for the privilege to serve as President this past year. It has been a great honor to participate in the many duties and activities required of your President. Thank you.

(Applause.)

**PRESIDENT WIDDEL:** At this time we would have our memorial portion of the meeting. Jack McDonald, would you come forward, please? Jack McDonald?

**MR. JACK McDONALD JR.:** Thank you very much. Each year we honor the fellow members of the Bar who have passed away since our last convention. And, as in past years, we have them listed in your booklet this year under the General Assembly Agenda section, toward the back end of that section. We will just read the names of the attorneys. And the background information concerning each attorney is in the booklet and you can review that.

The first name is Clemens F. Kelsch, former South Central District Judge and long-time attorney in Mandan, died January 2nd, 1987. Born in Rosenthal-Odessa, Russia, and raised on a farm near Linton, North Dakota. Kelsch graduated from the University of North Dakota School of Law in 1915. From that time on he devoted his life to the law.

In 1915 Judge Kelsch began his law practice in Mandan. He served four years as Mandan City Attorney, eight

years as Morton County State's Attorney, four years as First Assistant Attorney General and four years as Special Assistant Attorney for the Public Service and Water Conservation Commissions.

In 1962 he was appointed to the district bench and re-elected in 1968. Of the hundreds of civil cases he heard, only twenty-six were appealed and just six reversed. As District Judge, he helped revise the state's juvenile delinquency laws and draft the Uniform Pattern Jury Instructions.

A veteran of World War I, Judge Kelsch was active in the Mandan American Legion, Mandan Elks and Knights of Columbus. In 1966 he was made a Knight of the Order of St. Gregory by Pope Paul VI.

Judge Kelsch is survived by his wife, five sons, two daughters, twenty-five grandchildren, and twelve great-grandchildren.

Kenneth L. Arneson, former Air Force Major and attorney in Grand Forks, North Dakota, who died July 7th, 1986.

Kenneth L. Arneson was born February 13, 1918, in Fairdale, North Dakota. Prior to entering law school, Mr. Arneson had a distinguished career in the U.S. Air Force, serving as a pilot, and in other capacities, from 1943 to 1962, retiring with the rank of Major. In 1944 his plane was shot down by anti-aircraft fire, was wounded, but able to parachute to safety; however, he was held as a prisoner of war in German-occupied France and was able to escape with aid of the French underground. He later participated in the Berlin airlift.

Mr. Arneson attended the University of North Dakota School of Law where he received a national award from the American Law Student Association as the most outstanding student Bar Association president in the country. After receiving his J.D. Degree in 1965, he was associated with the present firm of Caldis, Arneson and Tingum in Grand Forks. He served as Assistant City Attorney in Grand Forks from 1965 to 1975.

Kenneth Arneson died on July 7, 1986, after a short illness. He is survived by his wife, two children, and one grandchild.

Manfred Ohnstad, the founder of the Ohnstad-Twicheil Law Firm of West Fargo, passed away February 25th, 1987, in Tempe, Arizona.

Born at Argusville on July 16, 1914, Ohnstad received a Bachelor of Arts Degree from Concordia College in 1934 and an LL.B. from the University of Minnesota in 1939. He has been a member of the North Dakota Bar since 1939.

As a State Representative in the North Dakota Legislature from 1941 to 1947, Ohnstad was a member of the Non-Partisan League and the first Legislative Research Council of North Dakota. He also served as President of the Cass County Bar Association and was a member of the ABA, American College of Probate Counsel, the West Fargo Lions Club, Faith Lutheran Church, and the Concordia College Alumni Association.

Manfred Ohnstad is survived by his wife, Amanda, two children and four grandchildren.

Francis John Smith, or F.J. Smith, long-time Burleigh County and Bismarck attorney, died December 6th, 1986, after a long illness. He is survived by his wife and one daughter.

After serving in the Pacific Theatre during World War II, Smith returned to North Dakota to complete his undergraduate work at Bismarck Junior College and the University of North Dakota. In 1952 he graduated from the University of North Dakota School of Law, where he received his Juris Doctorate Degree with distinction, and began his legal career with a Bismarck law firm. In 1970 he opened his own office in Bismarck and practiced law until he retired in 1982.

Dedicated to his community, Smith was active in the Bismarck Chamber of Commerce, the McCabe United Methodist Church, Burleigh County Red Cross, Bismarck Kiwanis Club, Salvation Army, Bismarck Masonic Lodge, and Scottish and York Rite Bodies.

And Erwin Brendel, long-time Renville County and Mohall attorney, died July 16th, 1986.

Born in Odessa, Russia, Brendel came to the United States as a young boy. After graduating from UND in 1941, he served in the U.S. Army during World War II. In 1951, he received his Juris Doctorate Degree from the University of Notre Dame Law School and returned to Fargo, ND, to become Claims Attorney for the Farmers Insurance Group. In 1954 Brendel moved to Mohall and became City Attorney. In 1955 he also took over the duties of States Attorney for Renville County. He held both positions until 1985.

Erwin Brendel died on July 16, 1986, in Rochester, Minnesota, and is survived by his wife and four children.

Perhaps if we could stand and just give fifteen seconds of silence. May their souls and the souls of the departed rest in peace. Thank you very much.

**PRESIDENT WIDDEL:** At this point in the agenda I would like you to welcome Ralph J. Erickstad for the State of the Judiciary Address. Chief Justice of the Supreme Court of North Dakota.

(Applause.)

**CHIEF JUSTICE RALPH J. ERICKSTAD:** Good morning. Good morning.

**RESPONSE:** Good morning.

**CHIEF JUSTICE ERICKSTAD:** Thank you. It's difficult to get that response. I try to do that every day when I open the session of the Court. And it's nice to know that on the second try I've got through to you today.

I appreciate being invited back. I thank you, President Jack Widdel, President-Elect Charles Feste, Secretary-Treasurer Carla Kaluzniak Smith, Chaplain Phil Johnson, members of the Board of Governors, Executive Director Les Torgerson, and all of you, the members of the State Bar Association of North Dakota, attending this 1987 annual meeting.

If I may be permitted a little nostalgia, it was just eighteen years ago when Lois and I co-chaired the local arrangements, with the aid of about a dozen local committees, for the Bar Convention of 1969 over which Ken Pringle presided as President, which was held in the Hall of Four Seasons of the Old Grand Pacific Hotel in Bismarck. You know that no longer exists. I'm pleased to say that some of us are still around. With that experience I can say with sincerity that I appreciate the planning, work, and concern that goes into making a Bar Convention a success. Let us at this time, with our applause, thank our Bismarck hosts and hostesses, the Board of Governors and staff, and the members of the Legal Secretaries Association who have done so much and are still working to make this convention so enjoyable for all of us.

(Applause.)

I personally appreciate this opportunity to speak to you again on the state of the North Dakota Judicial System. The Judicial System depends heavily upon your friendship, cooperation and counsel. When we have your support, progress in judicial improvement is made easier, and results of our efforts are significantly more certain. When we don't have it, progress in judicial improvement is tortuous at best and by no means certain.

When I spoke to you last year, I selected seven major topics from the many topics affecting the courts of North Dakota that I thought most merited your consideration.

Incidentally, I do not contemplate covering word for word the message which is printed in the blue notebook.

But I'm hopeful that when you have some time, and I know time is scarce, that you will look at the printed message, especially the appendix, which relates to the resource material and some reference material that you may find important and helpful to you.

Rephrased slightly, those seven topics were:

(1) The need for improvement in appellate court services; (2) the need for resolution of jurisdictional problems within the exterior boundaries of Indian reservations; (3) the need for improvement in the delivery of municipal court services; (4) civil legal services for the poor; (5) interest on Lawyer Trust Accounts Program; (6) North Dakota Rules of Professional Conduct; and (7) the North Dakota Procedural Rules for Lawyer Disability and Discipline.

Today, I will discuss developments that have taken place in conjunction with these topics and then I will try briefly to highlight five other subjects which I think merit your attention.

I think you will conclude with me as we review these subjects that we are making good progress and meeting challenges together.

As to item one. As you know, House Bill 1088, as prepared by the Future Appellate Court Services Study Subcommittee, chaired by Representative Bill Kretschmar of the Court Services Administration Committee, failed in the House of Representatives. Only when we were able to secure bipartisan support were we successful through a delayed bill to salvage a part of the bill. The salvaged part was incorporated in House Bill 1677 which passed both Houses and became law when it was signed by Governor Sinner on the 17th of April, 1987. (Please see Appendix A for House Bill 1677.)

House Bill 1677 provides for the appointment of temporary panels of a Court of Appeals, which we hope to utilize beginning September 1, 1987, if a trigger level has been reached by disposal by opinion of 230 cases during the previous twelve months.

An administrative rule proposed by the Kretschmar Committee to aid in the implementation of House Bill 1677 which was reviewed by our Court Services Administration Committee, chaired by William Strutz, and amendments to that proposed administrative rule submitted by our Joint Procedure Committee, chaired by Justice "Sparky" Gierke, have been set for hearing before our Court on July 1, 1987. (Please see Appendix B).

The temporary three-judge panels of the Court of Appeals will consist of surrogate judges and active district court judges to which the Supreme Court will assign cases. At present, we intend to assign no more than five cases, and more likely only two or three cases, to a panel of the Court of Appeals each month. During the early fall and late spring we may need to form more than one panel to best utilize our surrogate judges who may be out of state during the winter. The composition of the panels will change each month so that no assigned judge will be overburdened.

I anticipate that each panel of the Court of Appeals will consist of two active district court judges and one surrogate judge, with the surrogate judge acting as the chief judge of the panel. The panel will receive legal research assistance from the present Central Legal Staff of the Supreme Court.

We contemplate assigning only judges who volunteer for assignments on the court of Appeals. No active district judge will be asked to serve on more than one panel in a year's time. As of this date, of our thirty-one inquiries, twenty-three district judges and four surrogate judges have volunteered to serve on the temporary panels of the Court of Appeals. Of the thirty judges who responded to our inquiry, one surrogate judge has requested that his name be placed on hold because of health reasons, one district judge has declined to serve on the Court of Appeals, but has offered to assist in other ways, and one district judge has informed us that he has incomplete information upon which to make a decision. One of the latter judge's concerns was over how our court would compute the cases necessary to trigger the temporary Court of Appeals. The answer is that we will count all cases disposed of by opinion, and that includes multiple cases and Rule 35.1 cases. We will not include cases that are dismissed on motion without opinion. He had other concerns which I hope will be allayed or seem less serious as time passes and we gain experience with the concept.

Our Clerk of Court, Luella Dunn, and her competent staff will provide all clerkship services for the cases assigned to the Court of Appeals in the same professional manner as Supreme Court cases have been processed over these many, many years. She will be aided in this effort, through her foresight, by a new computer case-tracking system.

It is our hope that you will look upon the implementation of House Bill 1677 as a trial of a concept. If it proves workable, we hope that you will support a permanent Court of Appeals in the future if the Supreme Court caseload so warrants. In the interim, we hope that you will, after careful deliberation, give your support to the continuation of the services of the temporary panels of the Court of Appeals as created in House Bill 1677 by supporting removal of the sunset provision in the 1989 Legislative Session which is contained in Section 15 of House Bill 1677.

Item two. At the time of this annual meeting in June 1986 the plaintiff tribes in the case of *Three Affiliated Tribes of the Fort Berthold Reservation vs. World Engineering* has secured a stay of the mandate of the North Dakota Supreme Court, pending certiorari review in the United States Supreme Court, but no decision had been rendered as yet on that.

You will recall that the North Dakota Supreme Court in *Three Affiliated Tribes II*, on remand from the United States Supreme Court, concluded that an Indian tribe in the state court may sue a non-Indian in state court in a case arising within the exterior boundaries of a reservation, providing the tribe accepted state jurisdiction in compliance with state law.

The United States Supreme Court, after granting a second writ of certiorari, held, in effect, that such a condition upon the state's acceptance of jurisdiction in a suit brought by Indians against non-Indians was improper. It means that Indians may sue non-Indians in state courts over issues arising in Indian country, but it does not mean that Indians may sue Indians or that non-Indians may sue Indians in state courts over issues arising in Indian country.

The 1987 North Dakota Legislature partially addressed this issue of court jurisdiction in Senate Bill 2048 pursuant to a recommendation of the interim Legislative Council Study Committee, chaired by Senator Stanley Wright.

Senate Bill 2048 provides for state court recognition and enforcement of orders and judgments of tribal courts of only the Three Affiliated Tribes of the Fort Berthold Reservation and only in cases involving dissolution of marriage, distribution of property upon divorce, child custody, adoption, adult abuse protection orders, and adjudications of delinquency, dependency, and neglect of Indian children, and then only if the Fort Berthold tribal courts meet certain conditions. First, the tribal court must have subject matter jurisdiction. Second, the tribal judge must be qualified for admission to practice law in North Dakota. Third, the tribal court and tribal law enforcement agencies must recognize and enforce state court orders and judgments on a reciprocal basis. This

statute does not address similar problems on the other reservations, but, hopefully, if it works, it may help alleviate some of the problems inherent in jurisdictional disputes.

Item three. The initiative of the Municipal Court Study Subcommittee, chaired by Calvin Rolfson of Bismarck, of the Judicial Planning Committee, chaired by Justice Beryl Levine, has now produced Senate Bill 2040 which was passed by the 1987 Legislature.

Senate Bill 2040 provides a new level of flexibility to municipalities in providing municipal ordinance violation court services by permitting the transfer of these services to county courts, without loss to the municipalities of the legislative authority to enact ordinances or to enforce those ordinances through municipal law enforcement agencies. The compromise arrived at in the Legislature permits the cities and counties to negotiate whether or not judicial services will be rendered for a city by a county judge and on what basis.

This legislation is of major importance and in time, when fully implemented, will be comparable in significance to the effect of the new county court system provided by House Bill 1060 in the 1931 Legislature. It reflects a major step toward improving the municipal court services. Like House Bill 1060, it recognizes the concept of local option and cooperative agreements.

Item four. Through your Board of Governors, you have led in the effort to provide civil legal services for indigents in our state.

You will recall that in 1985 you adopted a resolution requesting the Supreme Court to initiate a study to determine the future direction and appropriate mechanisms for providing civil legal services to indigent persons in our state in cooperation with the State Bar Association and the North Dakota Trial Lawyers' Association. In response, we appointed a nine-member Special Committee on Services to Indigent Persons in Civil Cases. Three of these members were appointed by you then President, David Peterson, two by the North Dakota Trial Lawyers' Association, and four by our court. (Please see Appendix F for a list of the committee members). Judge Joel Medd was appointed chairman.

The Medd Committee is facing a major issue for the North Dakota legal system. It is also an issue in most other states. Federal funding for civil legal services through the Legal Services Corporation is projected to decline even further. Ultimately, some means must be found to put the issue of civil legal services to the poor on the political agendas for legislative action.

Our system is an adversary system which works best when all sides are represented by competent counsel. Many judges recognize the frustration of attempting to preside over cases in which only one side is represented by counsel. Often in these cases, justice is only achieved with disproportionate strain of all parties.

In support of the efforts of this Bar Association to bring its weight and creativity to the task of strengthening local and national civil legal services, your President, Jack Widdel, has created a Joint Committee on Civil Legal Services, chaired by Mel Webster of Bismarck. (Please see Appendix G for a list of the names of that committee and the appointing authorities).

We look forward soon to a report from the Medd Committee which has diligently sought solutions to this problem. When the Medd Committee and the Webster Committee file their reports, we should have a better idea of how we should proceed to find a solution to this ongoing problem. To give you an indication of the seriousness of the problem, the Medd Committee submits that there are 53,418 poor households in our state, or 125,000 poor persons in North Dakota, in need of legal services today who cannot afford to pay for the legal services and thus may not be getting those services today. We will not have a system of equal justice for all until we find a way to provide civil legal services to the poor.

Item five. I'm very pleased to announce that our Court has adopted the proposed IOLTA program in Administrative Rule 24, effective July 1, 1987.

Incidentally, Vern Neff, who served as the Chairman of the Subcommittee of the Attorney Standards Committee, which petitioned our Court to establish the IOLTA program, informed me last night that it may be necessary to request our Court to delay the mandatory part of the Rule for three months or so to permit proper implementation of the Rule.

The IOLTA program provides for collection of interest on certain client trust accounts of all North Dakota lawyers. The funds collected from this interest will be entrusted to the North Dakota Bar Foundation for the benefit of civil legal services for the poor and other programs (please see Appendix H for Administrative Rule 24).

We thank you Vern, for a job well done. And we await your further communication.

Item six. As you may already have heard, our Court has adopted the new North Dakota Rules of Professional Conduct.

We have set an effective date for these Rules on January 1, 1988, to assure their appropriate publication and availability to all lawyers through the West Publishing Company edition of the North Dakota Court Rules of 1987. In the meantime, we have received assurances that they will be published in a special edition of the Northwestern Reporter Advance Sheets for North Dakota subscribers.

The members of our Court are very impressed with the careful proposal of this Bar Association and the extraordinary work of the Professional Conduct Subcommittee, chaired by Christine Hogen of Bismarck, of the Attorney Standards Committee, chaired by Vern Neff of Williston. In my memory, few committees have labored so long over such a difficult subject, with such overwhelming Bar approval. This Committee was composed of members appointed by the Chairman of the Attorney Standards Committee in consultation with the President of this Bar Association (please see Appendix I for a list of the Professional Conduct Subcommittee membership).

Those are the people to whom you should personally express your thanks and appreciation for the few substantive changes our Court made to the Committee proposal. Please see my written message and Appendix J.

I thank you, Christine and your Committee members.

Item seven. Our Court has tentatively completed work on the North Dakota Procedural Rules for Lawyer Disability and Discipline. With the leadership of Justice Herbert Meschke, we have drawn upon the Model Rules for Lawyer Disciplinary Enforcement of July 1985 of the American Bar Association for guidance. We have tentatively set July 1, 1987, as the effective date for these Rules, subject to the suggestions and comments of the Attorney Standards Committee, chaired by Vern Neff, and the Lawyer Disciplinary System Study Subcommittee, chaired by Mark Stenehjem.

We thank all of you who have worked so hard in this endeavor. Please see my written remarks for further commentary.

And Item eight. A new issue has arisen since I last spoke to you. Pursuant to Title IV-D of the Social Security Act and Public Law 98-378 enacted in August of 1984, and the Federal Administrative Regulations of the United States Department of Health and Human Services, the states are required to have in effect and use an "expedited process" to establish and enforce child support orders in intrastate and interstate cases and to meet stringent

docket currency standards for these child support enforcement proceedings.

Through the initiative of the Juvenile Procedures Committee, chaired by Judge Norman Backes, and the cooperation of the North Dakota Department of Human Services, our Court has amended Administrative Rule 12 to establish these time standards. In addition, in order to comply with the federal law and regulations, until a waiver is received from the Secretary of the United States Department of Health and Human Services, all child support enforcement cases will be heard by referees who, for this purpose, will include Judicial Referees and County Judges serving as referees. In return, substantial federal funds will pass from the federal government through the Department of Human Services to the counties of North Dakota and to the North Dakota judicial system to reimburse for these expedited services (please see Appendix L for amendments to Administrative Rule 12).

I hope you will find these court services to be efficient and satisfactory. If you experience any problems or have suggestions to improve these services, please speak to the Presiding Judge of your district, the Court Administrator of your district, the State Court Administrator, William Bohn, or Gregory Wallace of our State Administrative Office.

Item nine. On November 12, 1986, our Court approved amendments, effective January 1, 1987, to the Rule for Limited Practice of Law Students which are intended to permit the supervised practice of law by third-year law students without the prior approval of opposing counsel in particular cases. These amendments had the unanimous support of the State Bar Association's Board of Governors. We are pleased to see this continued cooperation of the Bar with the excellent legal training programs of the University of North Dakota Law School.

Item ten. On March 24, 1987, our court gave final approval to amendments to the Rules of the State Bar Association for Continuing Legal Education and the Admission to Practice Rules as requested by the Continuing Legal Education Commission, chaired by James Hill, and the Attorney Standards Committee, chaired by Vern Neff. They had previously been made effective as of December 1, 1986, by an emergency rule. These rule changes clarify both licensure and continuing legal education requirements for lawyers.

In furtherance of these amendments, this Association secured passage of House Bill 1307 to allow attorneys to retain social membership in the State Bar Association of North Dakota without having to maintain annual licensure to practice law and without having to meet continuing legal education requirements.

Item eleven. The occasion is here for our celebration of both the 200th anniversary of the United States Constitution, between 1887 and 1991, and the 100th anniversary of our State Constitution in 1989. We have appointed a Special Constitutional Celebration Committee, chaired by Justice Herbert Meschke of our Court, to coordinate the celebration.

Please see my written remarks for a brief explanation of the objective and activities of this important committee.

I know that this Bar Association is a leader in developing public awareness of these constitutional documents which govern our national and state life through two unique media public service announcement programs for the United States Constitution and the North Dakota Constitution. I applaud those efforts which have been organized through your Executive Directors, Les Torgerson, and Penny Barry of your staff.

Item twelve. The North Dakota Judicial Conference is alive and well under the leadership of Justice Gerald VandeWalle as its Chairman, with Judge William Neumann as Chairman-Elect, at the conclusion of its first two years of existence. A Jury Study Committee, chaired by Judge Jon Kerian, is studying jury administration standards for North Dakota. The Juvenile Procedures Committee, chaired by Judge Norman Backes, provided leadership for the judicial system in complying with the federal standards regarding child support enforcement cases, which I've earlier alluded to. The Judicial Conference, among other important purposes, serves as a forum for discussion of vital issues facing judiciary within the framework of our three co-equal branches of government.

And this is my conclusion. As I started, I will finish. I appreciate having had this opportunity to talk to you about the progress that has been made in improving court services in North Dakota during this year. I thank you for your support in the past, and I look forward to working with you in the future for the improvement of our judicial system. I hope that I may talk to you on a person-to-person basis and thereby learn from you ways to strengthen and improve our judicial system.

Thank you very much.  
(Applause.)

**PRESIDENT WIDDEL:** At this time I call on Les Torgerson for some announcements for the Association.

**EXECUTIVE-DIRECTOR LES TORGERSON:** I have three announcements to make, the third of which deals with a time change in the program. So if you get your programs out and look at the spouse activities for this afternoon I'll make the other two announcements while you're doing that.

First of all, we'd like to encourage all of you to wander around the exhibit area and talk to each of the vendors who are there. They've invested a lot of time and resources in setting up their booths. And it would certainly be a disservice to them if each of us weren't to visit with them. In your registration materials you got a little pamphlet that looks like this. As you go around the vendor area have each vendor place a stamp, a little dot, over the number of their booth. When you have the entire brochure completed drop it in a basket that's out there. And that will be used for the drawing for the grand prizes. And if you look at the grand prizes, we have some very nice things to award. But it's necessary to talk to each of the vendors in order to be eligible.

The second announcement is one that the Legal Assistants Association has asked us to make. June 25th, 1987, has been officially declared Legal Assistant Day in North Dakota by Governor Sinner. A luncheon will be sponsored by the Western Dakota Association of Legal Assistants and the Red River Valley Legal Assistants on June 25th at the Kirkwood. The Honorable Justice Beryl Levine will present the proclamation. Guest speaker will be Patty Armstrong NALA Director of Region G. She will speak on "The Utilization of Legal Assistants." Anyone may attend the luncheon. Those interested in legal assistants are encouraged to attend. Legal assistants should attend and receive the special recognition.

The third announcement which I mentioned is a time change in the program. The spouse tour this afternoon which will go to the Old Governor's mansion, the Historical Heritage Center, and then have a reception, which has been changed from 1:30 to 2:30. Buses will leave the Kirkwood at 2:30 this afternoon. So those of you who have spouses intending to take that in or those spouses present here please note that time change. From 1:30 to 2:30 today. Thank you, Jack.

**PRESIDENT WIDDEL:** Thank you, Les.

I think that the staff and the vendors deserve a special recognition for that excellent display we have in our courtyard out here. We have not had such a display in years that I can remember. So we are fortunate to have that



service provided to the Association.

And thank you, Les.

As I mentioned in my remarks earlier, the Attorneys Liability Protection Society is an important option that the Board of Governors has been working on for many years in order to have an alternative available to the attorneys of North Dakota.

At this time I would like to call upon Robert Minto, Jr., the President of the ALPS plan. And he is from Montana. At this time, Bob, would you come forward?

(Applause.)

MR. ROBERT MINTO, JR.: Thank you. Mr. President, members of the Board of Governors, and ladies and gentlemen. I'm really pleased to be invited to attend this Association meeting. I have had the dubious privilege of attending now three Bar conventions in states other than my own. And I have some interesting observations about lawyers and the way they react in their non-native environment to the courtroom. Generally speaking, I have not yet attended two conventions that have the same kind of flavor or the same kind of ambience. Lawyers seem to have only one characteristic which is in common throughout and that is that they tend to like to enjoy themselves when they go to Bar conventions.

I have to tell you a little story about Dwight Kalash and I and our experiences in Alaska. He and I, we've divided the country up. I'm attending as many of these as I can where there aren't conflicts. And I'm taking one or two of my Directors to each of the conventions. And I have to tell you that Alaska was truly a unique experience. Because as you get out into the display area you will see that ALPS has a very nice display with lots of information; copies of the offering circular, copies of the application form. Information from which we can talk to you. When Dwight and I got up there to Fairbanks, got up in the morning, went out to the display area to set things up. Rick Kalland from the Fred S. James organization was with us. Rick went to the front desk of the hotel to pick up the materials which are our display to set it up and found as he opened the box 5,000 sets of wax ear plugs. Emery or Airborne, I don't remember which service, was shipping them up. And they got the air bills switched on these packages. Our display went to Prudhoe Bay. We got the ear plugs. It took us two days to get them back. When I was making my address to their General Business Section as I'm doing to you today I suggested to their Executive Director that we might hand the ear plugs out as premiums and that they could be adequately used during their CLE seminars. He took the comments in good stead.

Anyway, it took us two days to get our materials. But we received an incredible welcome in Alaska. We received an incredible welcome in Kansas, as we did in West Virginia. And I'd like to take a few minutes today, and I'm not going to take very much time, because I'd like to have you come visit us out in the display area and visit with us on a one-to-one basis, but I'd like to give you some history and some background about the company. ALPS had its inception a number of years ago. I've been on our Insurance Committee in Montana for about seven years. And we have discussed the possibility of having a Jack Rabbit Bar multi-state captive, because we all recognized that we were too small. And that prospect was first proposed at the Jack Rabbit Convention I believe in Williston, North Dakota, three or four years ago. At that time there weren't any problems. Premiums were cheap. Everybody was happy. Commercial marketplace was taking reasonably good care of us. And there really was no momentum or impetus to go forward with it. Two years ago I received in my mail a letter from Mark Smith, the Executive Director of the West Virginia Bar. And he said, "Hey, we're starting to have a crisis in West Virginia. We'd like to form a captive, but our consultants tell us we're too small. Would you like to get together with me in Chicago in January?" (The thought of going to Chicago in January, was not really thrilling) "and talk about that?" And he and I and a number of other people scheduled to meet in Chicago. Unfortunately, my schedule was changed at the will of one of my courts and I was not able to attend that meeting. But, in any case, sixteen states got together in Chicago and discussed the possibilities of a multi-state program. I talked to Mark and had him send us copies of the minutes of the meeting. And the long and the short of it is that seven states threw in \$4,000 to commission a study by McNeary & Associates to determine whether a multi-state captive would be feasible. Those states met again in Dallas to talk about the possibility, which was at best at that point a long shot. We met with the consultant who presented the questionnaire that was going to be mailed out to the members. Questionnaire was mailed. And again in February of 1986 the committee of seven reconvened in Baltimore at the Mid-Winter Meeting of the ABA. And the result was that the consultant said, "Yes, if you all get together it's big enough. If this group of you get together you can do it." And we then got to the bottom line of, "What in the world is this going to cost us?" And the consultant's figures, which we modified after taking a look at the monumental securities problems of dealing with a multi-state capital fund-raising program, came down to about \$325,000. And we pared that down to \$280,000 after cutting out all of the fat. And went back to our respective State Bars and said, "We need to have each of you give us \$40,000 of your hard-earned money so that we can go out and organize this company." Needless to say, that was not well received in all seven states. And the net result was that in Whitefish, Montana, last July four states, West Virginia, Montana, South Dakota and Kansas came to a meeting with a commitment from their Bars to fund the \$40,000. That was the first opportunity that I had to meet Les Torgerson. Les came from North Dakota to find out what we were about. And that was what I considered to be the beginning of ALPS as we know it today. Those four states made the commitment to go forward with the program and attempt to raise 3½ million worth of capital in their states. Since that time North Dakota has joined the group. And we are extremely pleased to have now as the core group of the ALPS program the entire Jack Rabbit Bar, with the exception of the state of Utah. In addition to the Jack Rabbit Bar we have the states of West Virginia, Kansas and Alaska. We are now ten strong, 18,000 practicing lawyers who are potential insureds, potential surplus contributors. We have the states of Nebraska and New Mexico who are currently in the process of completing their feasibility studies. And if they join us that will bring another 9,000 lawyers, bringing us up to 27,000 potential practicing lawyers to give us the status of being the fourth largest captive in the country. Excuse me. The fourth largest Bar Association in the country. And we will be the second or third largest captive, depending upon the degree of participation.

I'd like to talk to you a little bit about the philosophy of the company. This company is founded on the premise that we want to provide a stable, emphasize the word "stable," malpractice market for the lawyers in our states. We are not going to be cheaper as a matter of course than the other commercial market places. That is not our intent. Our intent is to provide you with coverage from a company that you own so that if we're profitable it will come back to you either in added surplus to the company or it will come back to you in terms of policyholder dividends. We want the company to be strong enough so that when the next insurance crisis hits, and it will hit, it's just a matter of when. It's going to be either in four, seven or ten years. When the next insurance crisis hits, the commercial market places withdraw, the commercial markets withdraw from our states, because they can find more profitable places to place their capacity. When the reinsurance market gets tough and it gets harder for us

to get reinsurance, we want to have sufficient capital, sufficient surplus, built up in this mutual company that we've formed so that we can afford to offer, if you will, you in the state of North Dakota adequate insurance limits to provide protection for your clients. Because, after all, we are not here to protect your assets solely, we're here to provide your clients with the protection that they deserve from the mistakes that we all, and I emphasize the word "all," will make in our practice. Those of us that have been fortunate enough to get through our practice to this point without having been sued do so only with the knowledge that we have been able to find our mistakes and fix them before they became problems. That is not going to be the case for all of us in the future. Statistically each of us is going to be sued 2.4 times in our professional career for malpractice. We owe it to our clients to have adequate protection for the injuries that we create.

Like to talk to you a little bit about the rating process. There are twelve captive malpractice insurance carriers in the country, and more springing up on a daily basis. Each of those states has, each of those programs except ALPS has, the unique privilege of being able to rate solely on the basis of their own state. Because that's all they insure is lawyers in their state. ALPS is unique in that it is a blend. We've taken small rural, as I call them, county seat law type states and we've put them all together. And we've said, "All right. We're going to pool the capital from Montana and the capital from North Dakota with the capital from Kansas and Alaska. And this is going to make a strong enough company so that we can afford to offer reasonable degrees of coverage. And we plan to be able to offer coverages from \$100,000 to \$5 million in this company depending on the demand that we get from each of you." And each of you will probably have received a card from me several weeks ago asking for some information about what kind of coverages you're interested in. That card was designed to give us feedback so that when I go to the reinsurance markets, which I am doing this month, with our reinsurance broker, so that I can give them an indication of the kind of coverage levels that we're looking for. Depending on what kind of responses we get from you, both in that process and in the application process, we will be offering coverages, a broad spectrum of coverages. We will be offering deductibles from 1,000 to 50,000 depending on the particular circumstances of the firm and depending on the financial ability of the firm to carry upper limits of deductible.

The policies we will be offering are as broad as any in the marketplace. We will be offering prior acts coverage. We will be offering tail coverage which is comparable to anything that's available. And when I say "tail coverage" I'm talking about your ability to be able to purchase ongoing coverage. If you cease to be insured by this company, we can sell you, or you're non-renewed, you're not going to be left high and dry. We're going to try to be a little bit innovative in offering those coverages. Depending on what type of cooperation we get with the reinsurance market we hope to be able to offer several choices as to the type of extended reporting endorsement or tail coverage that you can buy; one year, three years, annual renewable on a decreasing basis. So that you can decide how long after you've retired from the practice or after you have been covered with this company that you feel you need to carry that coverage so that you don't pay for something, in essence, that you don't want.

We've set up what we think will be one of the most responsive claims and loss prevention programs in the industry. Our application form, as an example, has an individual and a firm application. The individual application talks to each lawyer about his areas of practice rather than talking about the firm's area of practice. And it sounds on its face like a lot of extra effort. But, if you think about it, the purpose for that is really in your interest. Because our company, and there's only one other company in the country that does this, and that's the Missouri Captive, will be applying areas of practice surcharges on an individual lawyer-by-lawyer basis; in other words, in the past if you have one lawyer in your firm that did a substantial amount of securities work all of the firm got surcharged for that area of practice. Under our program only the lawyer who is doing the substantial area of practice, securities area of practice, will get that surcharge. We have area of practice surcharges just like every other company. We would be irresponsible if we didn't. But we have chosen to try and be different, to try and force the commercial industry, if you will, to be responsive to the specific needs of the specific lawyers in each specific firm. We intend to be small enough and responsive enough so that we can do that.

We are going to be working with your State Bar to provide you with malpractice prevention CLE. We're going to be working with your State Bar in providing through your State Bar publications loss prevention, malpractice repair, claims prevention repair, times and materials on a monthly, quarterly basis. In addition, those of you that insure with us will be receiving a newsletter from us which will address those specific issues; how we can make you better lawyers in terms of reducing the risks to your clients for mistakes. Now we can't prevent a missed statute of limitations. But we can show you and remind you on a regular basis of things that you can do on a daily basis in your office to help solve those problems.

In addition, we intend through the counsel of Jerry Wile & Associates, a malpractice claims consultant out of San Francisco, to provide a claims repair program. One of the things that I don't want you to do is to be afraid to call us and say, "Hey, I think I'm in trouble." If you call us and say, "I think I'm in trouble" early enough and we are able through Mr. Wile's efforts, and ultimately through our company's people, to repair the claim before it gets to the status of being a full-blown issue, there are often times when you look at a problem and say, "I'm in trouble," and somebody else can look at that problem and find you a way to get out of trouble without having it cost us any money from an indemnity payment standpoint if you contact us early enough. We're encouraging you to be able to do that. If you contact us early enough and we're able to repair the claim it's going to have no effect. As a matter of fact, to my knowledge we're the only company that provides a threshold window that says, "There is no surcharge for claims experience for indemnity payments for the first claim under \$10,000 in any given year." We have set up as a matter of policy a philosophy that says, "We want to know about the trouble you're in, and consequently we're in as a group, as early as possible." So we're not going to penalize you if you get those claims to us and we're able to fix 'em for under \$10,000. You will not be surcharged. And that's unique at this point. I think we're going to be forcing the industry to address those issues and make some changes.

lawyers, some benefit from the effort that your Board of Governors, Les Torgerson, and particularly your Director, Dwight Kalash, have put forth on your behalf. We are seeing loss prevention seminars coming from the commercial carriers. We are seeing newsletters and loss prevention malpractice prevention materials coming out from those people. We are seeing a presence at Bar conventions by the agents of those companies that we've never seen before. And we hope that our presence in addition to providing you with a stable market will also make the commercial marketplace more responsive to your needs.

The last thing I want to tell you is that our company also has set up a very intricate system of surcharges and credits so that we can custom tailor your premium and your policy to your needs. And one of the credits that we have set up is a credit of five percent reduction in premium for all lawyers who attend malpractice prevention seminars. And you have a seminar on your program, I believe, by Mr. Bowman from West Virginia which will qualify you for that five percent reduction. So in addition to the benefit of making you more aware of how lawyers make mistakes I would encourage you to attend Mr. Bowman's seminar, because, among other things, it's going to have a monetary effect on the reduction of the premium that you will pay if you chose to insure with ALPS.

The last thing that I want to say to you is, "Send money." You've all received in the mail a copy of our offering circular under a cover letter from me and your State Bar President. If we don't have 3500 lawyers in our ten states come forward with \$1,000 we will not be here next year. I don't think that's going to be a problem. But I will stand here today and tell you that I want each of you to read this offering circular. And whether or not you decide to insure with us is irrelevant. Send your \$1,000. Because five years from now you may well be in a position where we are the only alternative. And if we don't get enough people we won't be an alternative. And the securities lawyer in me shudders at the thought of saying this. But it's an investment in your future. You are not going to get a monetary return for your \$1,000. I won't tell you you will. But I will tell you that the sending us the \$1,000 is going to provide an alternative for you and the lawyers of the state of North Dakota that very few lawyers in this country have got; and that is an opportunity to own the company that insures them, an opportunity to a certain extent to control the destiny of the malpractice situation in their state. We're going to be here if you fund us when you need us. If you don't, we won't. That's the bottom line. So please read the offering circular. And get your check in the mail as quickly as possible. The sooner we have three and a half million dollars in the bank, the sooner we can break escrow, and the sooner we will start issuing policies in your state.

I would like to turn the mike over to my two cohorts, Chuck Steilen and Dwight Kalash for a couple of remarks. And I would like to again thank you, Mr. President, for inviting me to attend this meeting. And I will be available for the rest of the day wandering about the halls or sitting in the meeting. And I would be delighted to visit with each of you individually about the ALPS program or your particular situation, whatever the case may be. Thank you very much.

(Applause.)

MR. CHARLES STEILEN: President Jack and ladies and gentlemen. I know you're getting tired of sitting, as I am. I'm going to try to be as brief as I possibly can. There are a couple of things I think you should be aware of as potential investors. First of all, I'm the hired gun. I'm the insurance broker who has been hired by the ALPS company to represent the company and help organize it. The reason I tell you that is because as a result I can take more or less an arm's length view of the company from a professional standpoint, because I've been in the business of writing professional liability for almost twenty years.

Number one, you should be aware of the fact that the attorneys, like Dwight Kalash and Bob, who have come from the various states that make the ALPS base up, if you would, have spent untold hours away from their individual practices in creating the company for you. And, secondly, that they've done that without compensation. And I think that's an important thing for you to know. Because no one is receiving any benefit from the formation or the operation of this company. These men have done this literally out of the goodness of their hearts and with the long-term benefits to the Bars in the ten states as the focal point for their efforts. So I think that's an important thing for you to understand.

Another thing that you have to understand is that if the company is going to be formed and have reinsurance, and some of you may or may not know what reinsurance is, but, quickly, when you buy a policy from ALPS, for example, for a million dollars, only a portion of that million dollars is really at risk for ALPS itself. Some portion, and we hope in this case at least three quarters of that policy, is at the risk of a reinsurance company. Just an insurance company, if you would. Before we as brokers can find reinsurers to back up, if you would, or reinsure your company we have to show that a good faith on your part, the capital, is, in fact, in hand, that the three and a half million dollars is in place. So it's a chicken and egg situation. And that's why it's so important for you to be responsive early.

Finally, I want you to know that again as someone that lives with this particular kind of product day in and day out, and has for a number of years, I'm very, very pleased to be able to tell you that the Board of Directors who are operating your company are highly professional. That they've been absolutely above board in everything that they've done. And that the ultimate product that they are in the process of offering you is indeed as good as there is in the business. And again I can tell you that from absolute knowledge, because I've lived with this every day of the week.

Finally, I just want to reiterate again what Bob said. We are out in the exhibit area. We do have the tentative rates for the state of Montana, North Dakota. Pardon me. I have been to a lot of Bar conventions myself. You must understand we cannot give you a quotation at this state of the game, but only an indication. Because the ultimate rates will be dependent on the reinsurers. However, again as the insurance professional I can tell you with reasonable comfort that those indications are probably pretty close to where we're going to be in the final analysis.

So I thank you for the opportunity to join you. And I encourage you to come and visit us at the booth out in the exhibit area. Thank you.

(Applause.)

MR. DWIGHT F. KALASH: Talking about a pitch, three of us at once. Obviously if you didn't know before you know that there are people serious about this company. I will be very brief. I know you're tired. I do have to tell you one thing. It's a news flash that I heard on the way down here this morning. They scraped all that paint off Tammy Baker and they found Jimmy Hoffa under there. They couldn't believe it.

The only thing I want to say to you is it's your turn. Your Board of Governors, your Association, I, have invested a good deal of time and a good deal of money, some of it your money, in this opportunity. And that's all that it is at this point is an opportunity. It's your opportunity. And it wasn't done for anyone except you. You, me, we the North Dakota lawyers, and ultimately the benefit of our clients. How many times have you said, "If only I could do something about . . ." some situation. Well, how many times have you looked at a premium increase in your malpractice coverage or discovered that the guy that covered you last year ain't gonna cover you this year? How many times have you said, "If only I could do . . ." Well, this is your opportunity. Do something. This insurance company is not going to go away as long as you do something. And, like Minto said, what you have to do is put up that thousand. Put up that thousand bucks and the company's there. And it's yours. And you will always have a voice in the Board of Directors. It's guaranteed by the Corporate Bylaws. There will be a North Dakota attorney forever on the Board of Directors of that corporation to speak for no one but North Dakota lawyers. And his only job on that Board of Directors will be to protect your interests, your opportunities. But if it isn't done in the next sixty days somebody's going to have to start all over. It isn't going to be me, folks. And I seriously doubt it's going to be Bob Minto. Because he's got about two years of his life tied up in this one. I have got six months of my time in it. Your Board of Directors has some of your money in it. Don't walk out of here today and say, "Geez, it's a nice idea. Somebody better put some money in." Go see the exhibit. Read the circular. And decide to invest \$1,000 in the future of your own practice and the future of the well-being of your clients. Thanks for the time.

(Applause.)

PRESIDENT WIDDEL: Thank you, Bob. Gentlemen.

Next item on the agenda is Criminal Justice Act Panel need for attorneys. And I would like at this time to introduce Edward Klecker, Clerk of the United States District Court.

MR. EDWARD KLECKER: Thanks, Jack. I don't think anyone in this room is aware of the fact that your President and I both went to high school at St. Leo's in Minot. I'm not going to say it was a tough school, but Jack in his senior year was approached by the principal who gave him the option of either going to the State Industrial School or to law school.

My comments are brief. I had a couple of good Ole and Lena stories to tell you. But the previous speakers took up so much time, I just can't do that.

I want to thank Dewey Kautzman for asking me to appear. Dewey, as many of you may know, is also a part-time U.S. Magistrate. And I also want to thank Les Torgerson for giving me these few minutes I need to discuss relative to the state of the Federal CJA or Criminal Justice Act and CJA Panel.

The Model CJA plan that's being used in the District of North Dakota was prepared in 1964 with the most recent revision adopted by this district in February of 1971. So you can tell it's not a recent document. The list of CJA Panel attorneys is badly outdated. And it's shrinking by the year. Many of the people originally in our CJA Panel have gone on to judgeships, they have retired, they no longer take CJA appointments. Participation in the plan that we have adopted is voluntary. That may be part of the problem. Attorneys are not coming forward as they should to accept these appointments. We admit approximately ninety attorneys a year to the Federal Bar. And I would say the individuals asked to be put on our CJA Panel numbers probably less than five per year. Perhaps if every law firm would participate with this the need for calling the same attorneys time after time would be lessened. And this is something that we have to do; it seems more predominantly in Fargo and Grand Forks, our Federal Courts in those locations, also in Minot or Bismarck.

The President of the Federal Practice Committee is Jim Hill. He is aware of the problem. And this is one of the issues that will be addressed at the July meeting of the Federal Practice Committee which will be held in Colorado Springs in conjunction with the Eighth Circuit Conference. I have been advised by the Administrative Office of the U.S. Courts that a new revision of the CJA Act is being considered and will be presented to the Federal Judicial Conference of U.S. Courts for preliminary consideration at their September meeting. In the meantime, those of you who may wish to be placed on our panel, please send me a letter just so indicating. And if you are with a large law firm and you have a junior partner who may represent your firm in this most worthy endeavor, please submit that individual's name to us as well.

My last comment is in your display area next door you will notice there are three Kiosks about six feet tall each holding four large posters memorializing the Bicentennial of the Constitution. Senior Judge Bruce Van Sickle serves as Co-chairman along with Vern Neff of our District Eighth Circuit Bicentennial of the Constitution Committee. Judge Van Sickle has contacted members of the Bar in Dickinson, Jamestown, Fargo, Grand Forks, Devils Lake, Minot and Williston who have all agreed to pay for additional sets of those Kiosks to display in their community. Judge Van Sickle wishes me to recognize and thank the Bar for your efforts in memorializing our Bicentennial Constitution. And I said my comments were brief, and they were. Thank you very much.

(Applause.)

PRESIDENT WIDDEL: Next item on the agenda is an important part of our function as attorneys in North Dakota, and becoming more important every year. At this time I would like to call upon Joel Gilbertson, Chairman of the North Dakota Bar Foundation to give a report.

MR. JOEL W. GILBERTSON: Because of the time, it is almost 11:15, I wanted to tell you that I do not plan to be brief and, in fact, will take a full forty-five minutes for the report. I'm just kidding.

IOLTA, so that I can dispel any myths, IOLTA is not related to the Urban Cowboy. That was Travolta. That's John Travolta. IOLTA is Interest on Lawyer Trust Accounts. IOLTA is a program that we now have. And I am pleased to say that North Dakota has joined the list of states with an IOLTA program. We're the 44th state with an Interest on Lawyer Trust Account program. The rule adopting the IOLTA program, the Administrative Rule 24, was referred to in the Chief Justice's report this morning. It was adopted effective July 1st, 1978. The North Dakota Bar Foundation is, under the rule, the repository for the funds in the IOLTA program. And rather than talking about some of the other Foundation programs I will concentrate on IOLTA, because I'm sure a lot of you are interested in IOLTA as you will be, whether you like it or not, involved in IOLTA. Before going into a quick overview of what we know so far about IOLTA, I would like to thank Vern Neff and Arnie Fleck for their work in preparing the IOLTA suggestions and submitting the IOLTA program with the Attorney Standards Committee to the court.

The most helpful way to discuss IOLTA is perhaps in a flow chart mode. The purpose of IOLTA is to take small amounts from attorney trust funds, attorney trust accounts, amounts that either because they are so small or because were left in the trust account for such a short amount of time, have never been in interest-bearing accounts, in fact, have never really done anything for anyone except perhaps for the banks. Some time ago in Florida somebody decided, "Well, why if we put all of these trust accounts together we can really, as a group of lawyers, do something for someone. More specifically we can do something for, make a real contribution to, some charitable causes in the state." And so IOLTA was off and running. And, as I indicated, we are coming up as the 44th state with an IOLTA program. We've been able to learn from other states. And for that that will save us a lot of time. For example, I am told that Montana has a specific computer program for processing IOLTA funds.

Well, as I indicated, IOLTA, the best way to look at it is from, first of all, two sides; one is the income side. And the income meaning income to the Foundation from the lawyers of the state. A lawyer, for example, puts \$1,000 in his IOLTA account, and for a few days that interest on that IOLTA account will then, after the money is taken out of the IOLTA account and used for whatever purpose the funds will be used for, money will go directly from the banks or the financial institution to the State Bar Foundation where it is put in a separate and distinct fund. That then would be the end of the income side of the equation and we would start on the program side. The Administrative Rule 24 establishes a Lawyer Trust Account Committee appointed by the Foundation. The purpose of the Lawyer Trust Account Committee is to decide where the funds will go, who will get the funds, establish the application process, and sort through and review the grant applications. By rule the committee is established, five people, as I indicated, appointed by the Foundation, three lawyers and two nonlawyers. I'm pleased to announce this morning that the Committee has been appointed. That District Judge Allan Schmalenberger of Dickinson, who's the Vice-Chairman of the Bar Foundation, will be the Chairman of the Lawyer Trust Account Committee, Vern Neff of Williston will be Vice-Chairman of the Committee, Jane Heinley Voglewede of Fargo will be a third lawyer member, and the two nonlawyer members of the Committee will be Senator Rollie Redlin of Minot and Representative Kathy Widdel of Bismarck. We have sent letters, that is the Bar Foundation has sent letters

concerning the regulatory approvals and have not received responses from the Internal Revenue Service, the Federal Loan Board, the FDIC and the Federal Reserve System. We can't get the program going until we have those okay's. And, accordingly, I will today send a letter to the Supreme Court, the Chief Justice, requesting suspension of the IOLTA effective date for ninety days.

Sometime within the next thirty days the Bar Foundation will be sending a kit to all lawyers in the state which will have information about the development, and implementation of IOLTA and should have all of the forms or nearly all of the forms you will need. Because of the time problems I don't think it would be appropriate at this point to go into detail on how IOLTA will work except to say that we are working on it. That as problems arise we hope to deal with them as quickly as we can. That you can feel free to contact me or the Foundation office, the Bar Association, as the program is implemented and as you may have questions.

I can think as I looked at the annual meeting brochure, and I see the Constitution in the Bicentennial of the Constitution, the Cornerstone of Justice, and I guess that I can think of no more appropriate year than 1987 to begin implementation of the IOLTA program. The Bicentennial, the 200th Anniversary, of the U.S. Constitution. We think, those of us who have been working on IOLTA, think that IOLTA will have a significant impact on those who because of financial status have been robbed of the right to legal services and of other rights that we all share under the Constitution. We're excited by IOLTA. We think that it will be one of the most significant public service programs that we've had in the Bar for years.

And I think Les did have one more, before I close, he did have one more announcement I was supposed to make.

Candidate Kautzmann and his new friend Donna Rice will be hosting a campaign reception, I believe. Les, is that in the Monkeybusiness Suite? Thank you. I have nothing further. I'll be around for a while. Vern Neff is also here I see. And several others who have worked on the IOLTA concept. We will be glad to respond to any questions you might have. Thank you.

(Applause.)

PRESIDENT WIDDEL: Next item on the agenda is the resolution section. Wes Argue is unable to be here. He has a death in the family. At this time I'd like to call on Al Schultz to do this duty.

MR. ALFRED C. SCHULTZ: Thank you, Jack. Everyone has been sitting for a long time. And if they are like me circulation is practically gone in a portion of the anatomy. Why don't we all stand just quickly and then we'll sit down.

(Applause.)

MR. SCHULTZ: Okay. We have three resolutions that have been presented and we have another resolution that we would like to call to your attention this morning. And do the people who have presented the resolution wish to give them? If not, I will proceed.

Okay. The first resolution, the proposed resolution which we have, and I guess I will read these formal resolutions. We have a resolution.

WHEREAS, the State Bar Association of North Dakota is an integrated Bar which is governed by an elected Board of Governors; and

WHEREAS, communication between the Board of Governors and the Association members is essential to the operation of this Association; and

WHEREAS, it is extremely difficult for the members of this Association to review the proposed agenda for the meetings of the Board of Governors or for that matter the minutes of those meetings;

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the State Bar Association of North Dakota at its annual meeting June 10th through 12th, 1987, that the agenda for each Board meeting be printed whenever possible at least two weeks before the scheduled meeting and that in any event the official minutes be published at all times within thirty days of each meeting of the Board of Governors in the official publication of this Association.

That resolution will be offered tomorrow afternoon.

Another resolution. Proposed resolution.

WHEREAS, the State Bar Association of North Dakota is an integrated Bar; and

WHEREAS, the State Bar Association of North Dakota represents trial counsel, defense counsel, corporate counsel, government counsel, and other interests; and

WHEREAS, the State Bar Association of North Dakota Legislative Assembly; and

WHEREAS, the Federal Courts have determined that certain legislative lobbying by integrated bars in other states is an unlawful infringement upon members' Constitutional rights;

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the State Bar Association of North Dakota at its annual meeting on June 10th through 12th, 1987, that the Board of Governors and other representatives of this Association shall limit its lobbying efforts only to legislation which concerns: (1) regulation of attorneys; (2) budget appropriations for the judiciary and legal aid; (3) proposed changes in litigation procedures; (4) regulation of attorneys' client trust accounts; and (5) Law school and Bar admission standards.

That will also be presented for adoption tomorrow.

Another resolution. Resolution.

WHEREAS, the State Bar Association of North Dakota is an integrated Bar which is composed of all persons licensed by the Supreme Court of North Dakota and which is governed by an elected Board of Governors; and

WHEREAS, the Constitution of this Association is unclear as to whether a vote of the General Assembly of this Association can be overturned by a subsequent vote of the Board of Governors; and

WHEREAS, since the Board of Governors stands as the elected representative body of this Association it should not in principle be able to override a direct vote of the General Assembly;

BE IT THEREFORE RESOLVED, by the General Assembly of the State Bar Association of North Dakota at its annual meeting June 10th through 12th, 1987, that a vote of the General Assembly of the State Bar Association of North Dakota on any issue cannot be reversed or modified by the Board of Governors and that such vote can be modified or reversed only by either a subsequent two-thirds vote of the General Assembly at an annual meeting or by a two-thirds vote of the Association through a mail ballot called for by majority vote of the Board of Governors.

That resolution will also be offered tomorrow afternoon. And hopefully some of these resolutions will encourage attendance and participation in the meeting tomorrow afternoon.

We have another proposed resolution.

WHEREAS, the State Bar Association of North Dakota is operated by the Board of Governors, which board is made up of the President, President-Elect, Secretary-Treasurer, Immediate Past-President, ABA Delegate, Law

School Dean, the Presidents of the seven Judicial District Bar Associations, all of whom are elected by the general membership or the District Bar Association members except for the Law School Dean; and

WHEREAS, the State Bar Association of North Dakota's general membership only meets annually in June; and

WHEREAS, the North Dakota legislature meets in general session from January to April every other year and has ongoing studies of legislative matters taking place in the interim through the Legislative Council; and

WHEREAS, it is impossible to poll the membership on all matters which come before the interim legislative committees or the legislative body; and

WHEREAS, the State Bar Association of North Dakota has an obligation to provide input into the legislative process; and

WHEREAS, it is recognized and understood that the State Bar Association of North Dakota is an integrated Bar and that the majority view of the Board of Governors may not in every instance reflect the will of each member of the integrated Bar; and

WHEREAS, the Board of Governors has established a policy whereby any member who objects to the positions taken by the majority of the Board of Governors on legislative matters may request a portion of his or her Bar license fees be contributed to the North Dakota Bar Foundation; and

WHEREAS, in order for the State Bar Association of North Dakota to function and provide input in the legislative process on a timely basis;

NOW, THEREFORE, BE IT RESOLVED, by the General Assembly of the State Bar Association of North Dakota at its annual meeting June 10th through 12th, 1987, that the Board of Governors by majority vote of the Board may take positions on matters pending before the legislature or the interim committees of the legislature and that the Board of Governors or its designated representative may appear and testify as to the position taken by the Board of Governors by majority vote on any and all matters pending before the legislature and that any member hereof who objects to the position taken by the Board of Governors may request that a pro rata portion of his or her Bar license fees be contributed to the North Dakota Bar Foundation.

And then we have an additional resolution. It's a combination resolution here. And I think I'll just at this time call it to your attention. But it will be read in its entirety. It's a resolution by the members of the State Bar Association who have enjoyed the unselfish work and efforts of those who have contributed towards the enjoyment and success of the 87th Annual Meeting of the State Bar Association. And the resolution will provide for our thanks and appreciation to the members of the staff, the members of the Burleigh County Bar Association for their contributions, the members of the Bismarck-Mandan Legal Secretaries Association, the members of the law firms and the city who have contributed by their generosity towards the success of the meeting, to the Official Court Reporter, to the sponsors of Legal Expo, to the First Trust Company for their sponsorship, to Legal Assistance of North Dakota, and to the officers, the President and the officers of the Bar Association. And that resolution, I'm giving it in condensed form. If there's any objection I will read the entire resolution. Otherwise, we will read it and present it tomorrow.

We have no further resolutions that have been offered. Are there any further resolutions from the floor at this time?

Mr. President, there haven't been any further resolutions offered. And so we will present these resolutions tomorrow afternoon.

PRESIDENT WIDDEL: Thank you. Thank you, Al. As we are running short of time, the report on status of legal services of North Dakota will be given at tomorrow's assembly meeting.

At this time I would call on Jim Hill, Chairman of the North Dakota Commission for Continuing Legal Education.

MR. JAMES S. HILL: The Commission for Continuing Legal Education has been in existence in North Dakota for ten years. The program itself has been refined over the years. However, the constant that has been in this program has been the quality of the members of this Association. In the three years that I have been on the Commission there have been very few, if any, members who have failed to exceed those minimum requirements that have been placed on the members of this Association. We have, however, this year made a significant change. It has been referred to by the Chief Judge of our Supreme Court. We have gone from a calendar year to a fiscal year reporting period. Those have been approved by the Court in emergency form and now have been made the rules of our Association. I would encourage you to look at the language of the rules which is printed within the booklet of materials that you have been given. They are not going to be significant in terms of your duties. They I believe will make it much easier for all of you to comply. And I'm encouraged again by the support that we've received from all of the members in changing the reporting period. Mr. President, in light of the fact of time requirements I would end my report and refer the members of our Association to my printed report.

PRESIDENT WIDDEL: Thank you, Jim.  
(Applause.)

PRESIDENT WIDDEL: The next section report of Standing Committees and Sections on the agenda will be held tomorrow, also, as we are pressed for time.

At this time I would call for nomination of officers for the 1987-88 Association year. Secretary-Treasurer first.

MS. HEIDI HEITKAMP: Mr. President, Thank you. My name is Heidi Heitkamp, and I'm an attorney here in Bismarck with the Office of the Tax Commissioner.

Today I rise to place into nomination the name of Carla Smith. Carla Smith is one of the attorneys in the Tax Department. And as I'm sitting in the back of the room, I've had a lot of opportunity to be involved in a lot of groups, and I'm always constantly amazed at the diversity of the North Dakota Bar Association and our membership. You look around, there are those of you who look like you're ready to go to court today and those of you who look like you'd rather be on the golf course, and those of you who are female and male and young and old, and those of us who represent government and public service and those of us who represent plaintiffs and defendants. And it's a good group to belong to. And I think that I'm especially pleased to put Carla's name into nomination because I think the Board of Governors should also reflect that diversity. And Carla has been someone who has been very active in the Board of Governors in the past year, has come back with a lot of great ideas and maybe not had all the time that was needed to have some of those ideas implemented. So I think it's important to have that Board of Governors reflect that diversity.

Carla has been the President of the North Dakota Young Lawyers for the past year. And during that year they have implemented some bylaws. And she's received a grant from the ABA to write a farm booklet which will help

farmers in distress and put into plain English things that farmers need to do when they reach a situation of financial crisis. She has been an ABA Young Lawyer Membership Chairperson for the past two years, and in August will become the District Representative for the ABA on the Young Lawyers Division Executive Council.

So one thing I did want to say maybe on a more personal note about Carla is that when I look to a person or an individual for leadership I like to look at what they've done in the past, but I also like to look at whether this person has a vision for the future. I think Carla has a vision for the future for the Bar Association. And I'd be thrilled to put into nomination the name of Carla Smith for Secretary-Treasurer of the Bar Association.

(Applause.)

PRESIDENT WIDDEL: Is there a second for the nomination?

MR. J. PHILIP JOHNSON: Mr. President, it's been my pleasure to serve with Carla on the Board of Governors this past year. And I've been impressed with her wit and intelligence and dedication. As Carla is sitting right here up front as you can see, perhaps, she brings something extra to this position that very few lawyers are able to offer. This is a woman who is really a legal heavyweight. It's a woman with a fertile imagination. A woman whose legal career is pregnant with professional possibility. And I really think that Carla is prepared to deliver the best of her special taste to the State Bar Association of North Dakota. Thank you, Carla.

(Applause.)

PRESIDENT WIDDEL: Are there further nominations? I also would request that when you're speaking to the Assembly if you would give your name and your residence for the benefit of Mr. Mark, our Court Reporter.

MR. GARY PEARSON: For Mr. Mark, our Court Reporter, my name is Gary Pearson, Grand Forks, North Dakota.

Mr. Chairman, members of the Assembly, it is my honor to appear on behalf of Gregory Bickle. And I will not wax so eloquently as my predecessors, although one of the reasons I'm here obviously is because Mr. Johnson got to say something. Anyhow, Greg Bickle has been thoroughly acquainted with the Bar Association, a strong supporter of the Bar for a number of years. Served in many capacities. I believe also with the Burleigh County Bar Association. He is eminently qualified. He's a lawyer and CPA. He's been very active on a committee that I chair, the Joint Committee between Lawyers and Accountants. He has all the qualifications for office, at least as I see those qualifications, which are one, endurance to sit through meetings like this for interminable hours. He's been here all morning. Did you notice that? He hardly even went outside. What a guy.

Secondly, he lives in Bismarck, which, of course, is also true about Carla. But that has a lot to do with our travel budget.

And, third, he has an eight handicap at Apple Creek Country Club.

Downside, I think, part on Greg is simply that he's probably not bondable. I'm not sure that's important anyway since we don't have any money, do we? And actually being around Carla, as you can see, is a lot more fun than being around Greg. I am pleased and honored seriously to place the name of Greg Bickle in nomination to run. And I'm happy to see a contested election with my good friend Carla. I wish you both well. I place in nomination the name of Gregory, I think it's Lazlo Bickle. Thank you.

(Applause.)

PRESIDENT WIDDEL: Is there a second for Mr. Bickle.

MR. JAMES S. HILL: Mr. President. Last night Greg asked if I would stand before you and second his nomination. I didn't realize at that time he had an eight handicap. I didn't get a trophy, and I might have reconsidered at that point. I am happy, however, to put Greg's name into nomination for the position of Secretary of this Association. Greg and I came to Bismarck approximately the same time. Greg was immediately enthusiastic about putting himself in the mainstream of the practicing Bar in Bismarck. He did so by engaging in all of the activity one would expect of a young lawyer. He has served in virtually every office within our local Burleigh County Bar Association. And I think the important thing is he has always taken his share of what I would consider the dirty jobs. Whether you needed somebody to put together the golf tournament or to organize the tournament for the State Association meeting this time we always called Greg and Greg would always do it. He has, in turn, served as President of Our Bar Association. Has always done an exemplary job. I believe that he would make an excellent addition to the Board of Governors in the position as Secretary. Thank you.

(Applause.)

PRESIDENT WIDDEL: Are there any further nominations for Secretary-Treasurer office? Are there any further nominations for Secretary-Treasurer? Hearing none, the Chair will entertain nominations for the position of President-Elect of the Association.

MR. JAMES S. HILL: The Parliamentarian raises the issue of whether there's a limit on the number of times I can get up here. President Widell, President-Elect Feste, and members of the State Bar Association of North Dakota. It is a distinct pleasure for me to appear before you today to place into nomination for President-Elect of our Association my friend and my colleague Dwight Kautzmann of Mandan, North Dakota. I do not know what his initials stand for, and I can't tell you. It is a garnered secret within the family which even his mother will not reveal.

When I came to Bismarck eleven years ago I quickly became acquainted with Dewey. As you might guess, it was extremely difficult to avoid him then and perhaps even more difficult now. He was at that time doing considerable criminal defense work. And I had just started with the U.S. Attorney's office. I can assure you at the time of our initial meeting we did not start out as the best of friends. Dewey could never quite get the hang of my theory of criminal practice, and that was a guilty plea. He very seldom did it, and I became increasingly annoyed with the success that he would have in his practice. As time went on I thought that one way to neutralize the man was to encourage him to seek the then vacant position of United States Magistrate. He was even more aggravating in that position. Once appointed he began to immediately rule against me in virtually every case I appeared against him in.

Somehow despite those minor character flaws I have over the years become a good friend of Dwight Kautzmann. We differ in philosophy on almost every subject. Our political beliefs are in the opposite end of the spectrum. Dewey still believes that William Douglas is on the United States Supreme Court, and if he isn't he should be. So it brings up the question why are we friends? I think it is because of his rather amazing ability to make and win friends and his genuine character. During the first few months of our acquaintance I wondered aloud to myself, "Who is this man that is known only as 'Dewey'?" For history has given us very few personalities whose reputation is so diverse that they need no last name to be identified. Was he of the stature of people such as Ike or Marilyn, Poncho, Elvis or was he to be classified within the category of such luminaries as Groucho, Harpo,

Zeppo, Chico. Or perhaps those cartoon giants, Hewey, Dewey and Louie. To this date I still don't have the answer, but I continue to search.

I have, however, learned a great deal of other things about Dewey Kautzmann over the last eleven years. He has been an extremely active member of this Association. And, in my opinion, has always had an amazing ability to deal not only with the established members of this Association, but with those who are just entering into the practice of law. For all the years that I have known Dewey he has each year when new attorneys have been sworn in gone out to find those that are new to the Mandan area and has introduced themselves to him. He has an interest in those that will be practicing with him and against him.

A 1971 graduate of the University of North Dakota School of Law, Dewey presently sits on the Board of Governors as President of the South Central District Bar Association. He's also President of Morton County Bar Association, Secretary of North Dakota Trial Lawyers Association, a member of the National Association of Criminal Defense Attorneys, and a member of the Joint Procedures Committee of the North Dakota Supreme Court. As a member of the American Bar Association he sat on the ABA Young Lawyers Section Execution Committee for the states of North Dakota, South Dakota, Minnesota and Kansas from 1974 to 1976. He also served on a National Law Day Committee for the ABA Young Lawyers Section during that time frame. Dewey has been active in a number of State Bar Association activities and committees. He was former Secretary-Treasurer of this Association, a former President of the Young Lawyers Section, and a past member of the Inquiry Committee West, Continuing Legal Education Committee, the Federal Practice Committee, the Intermediate Supreme Court and the Civil Rules Committee. He is at the present time a part-time United States Magistrate. And while he is not involved in all of the activities that I've talked about he attempts to practice law in Mandan with Malcolm Brown and Bruce Bair.

Dwight Kautzmann, in addition to his expertise as an attorney, has an intense interest in this organization. He has what I would consider an easy way with people. Lawyers are comfortable with him, and he has the talent to make them comfortable in his presence. He is unique in his ability to deal with the human side of his profession. I would consider him clearly a man who is a cross between the old traditions and the new. I believe this sincerely about Dewey; that his handshake and his word are to be believed. They are his personal law. Dwight Kautzmann has always had a profound interest in our Association and, in my opinion, would make an excellent President of this Association. There is little more that one could say about a man who's only ambition in life aside from the practice of law is to drive a cab in Dublin, Ireland.

With pride in the accomplishments of my friend, and with a firm belief that his ability will greatly enhance the office of President-Elect of this Bar Association, I, with pride, place in nomination the name of Dwight Kautzmann of Mandan, North Dakota. Thank you.

(Applause.)

**PRESIDENT WIDDEL:** Is there a second for the nomination of Mr. Kautzmann?

**MS. CHRISTINE A. HOGAN:** Mr. President. My name is Christine Hogan. I'm from Bismarck. When Dewey asked me to second his nomination I said, "Dewey, I don't know. This is a time when I think it's really important that we have somebody who is going to be responsible." He says, "Oh not to worry. Not to worry." He said, "In all my career, in all my years as a lawyer, whenever anything went wrong I was always responsible."

I think most of us know Dewey, and we all know he has a lot of charisma. But I have learned that it's something he has worked at over the years. In fact, when he first started practicing law with Bair, Brown & Kautzmann I have heard that on the first day he was sitting in his office, and he was really interested in impressing the people that might come in. He saw somebody walking toward his office, so he picked up his telephone and thought this would be his chance. Said into the telephone "Well, gee, I'm really sorry, I just will not be able to take your case. No. Not even for \$2,000. I am just too busy." Put the telephone down. Looked up to his caller and said, "Now what may I do for you sir?" He said, "Nothing, I just came to hook up your telephone." But all kidding aside, Dewey is a very dedicated, loyal member of this Association. And I think he would work very hard as President and President-Elect of this Association. I'm very proud to second his nomination. Thank you.

(Applause.)

**PRESIDENT WIDDEL:** Thank you.

Are there further nominations for the position of President-Elect? Are there any further nominations for the position of President-Elect? Hearing none, the nominations will close.

The next item on the agenda is the District Bar Association meetings. District Presidents will be determined by members for the East Central, Northeast Central, South Central and Northwest District Bar Associations. And they will meet to elect a President who will serve on the Board of Governors for a two-year term.

At this time we will recess to reconvene on Friday afternoon at 1:30.

(Whereupon, the proceedings adjourned at 11:50 A.M.)

#### FRIDAY JUNE 12, 1987

(Whereupon, the proceedings reconvened at 1:39 P.M. as follows:)

**PRESIDENT JOHN E. WIDDEL, JR.:** At this time I will call the Assembly meeting to order.

Some preliminary matters we should go over before we get to the agenda. If there are any present here that wish to speak from the floor, would you please identify yourself before the microphone and the city where you live? This information is for the benefit of all present and also for the benefit of our record of the Assembly being completed by the Court Reporter.

I have appointed J. Philip Johnson as Parliamentarian for the duration of the General Assembly.

In the event that we have a need for ballots on the issues before the Assembly, and also for the election, I'm going to appoint Mark Larson and Don Holloway and Les Torgerson as proctors for tabulating the vote. You gentlemen will be available, we would appreciate that. Thank you.

One announcement at this time. The Vaaler Insurance Company provided a prize, which is a grill, at their exhibition booth in the courtyard. A drawing has been completed, because they do wish to close the booth, and they wish to leave as soon as possible. The winner of the grill is Bill McKechnie from the Bjella Law Firm in Williston. So if Bill would make some arrangements, please to get his new grill we would thank you.



First item on the agenda this afternoon is the Report on the Status of Legal Services in North Dakota by the Executive Director of the Legal Services, Linda Catalano. Linda.  
(Applause.)

MS. LINDA CATALANO: Thank you, Jack, members of the Board of Governors, and members of the Bar here this afternoon. I'd like to say first that I really appreciate not having to have made my report yesterday so that I'd be first on the agenda today and could take a little more of your time this afternoon. I'm sure I won't run more than a half an hour or so.

My name is Linda Catalano, as I was introduced. I'm Executive Director of Legal Assistance of North Dakota, which is a virtually state-wide, nonprofit organization providing legal services in the civil area to low income people in North Dakota. I'm here today, though, representing the entire legal services community, and also making a presentation on behalf of the Joint Legal Services to the Poor Committee of the State Bar.

The last time I addressed the State Bar Association was at the Annual Meeting in 1984. And since that time there have been some what I consider significant developments in the delivery of legal services. I'm not going to be giving you a rundown on all those right now. I've tried to save time by passing out a report which most of you should have received yesterday if you attended the business meeting. If you'd like a copy, they do have some extra copies at the registration desk. That report outlines the developments in 1985 and 1986.

There are five government-funded legal services programs operating in North Dakota right now today; one is at the University of North Dakota School of Law, their clinical program, which is incorporated as a Legal Aid Association, one is Legal Assistance of North Dakota, one is North Dakota Legal Services, which operates out of New Town and serves the Fort Berthold Reservation as well as surrounding counties. It is primarily an Indian legal services program, but also serves non-Indian clients in those areas. In addition there are two out-of-state corporations which serve clients in North Dakota; one is Dakota Plains Legal Services, which is headquartered in Mission, South Dakota, which serves the Standing Rock Indian Reservation, and the other one is Southern Minnesota Regional Legal Services headquartered in St. Paul. And it serves the migrant population in North Dakota and has an office in Fargo.

It's very hard for people who are not working very closely with civil legal services in North Dakota to appreciate really not the complexity of the work, because we do divorce matters, domestic relations, public benefits, Social Security, consumer work, but to appreciate the complexity of the organizational structure and the rules and regulations that come with government funding. During the 1980s there has been an exponential increase in the types of governmental regulation not only in the legal work we do, but in how we administer our funds and all the paperwork and the bureaucratic red tape we have to go to to do what we want to do. You're all probably more than aware of the cut-back in funds that was suffered in the early 1980s. And we have almost on a national basis regained in Congress and through congressional appropriations the monetary losses we suffered. In 1980 legal services nationally was funded at \$321 million and now it's funded at \$305 million. But, as you also know, there have been a number of years of inflation.

Legal Assistance of North Dakota being a statewide organization is often looked at as representing the totality of legal services that is being provided in North Dakota. And, as such, we try to represent all that is good and best and right. And we try to incorporate all segments of the legal community. In 1984 when I made my report I was very excited about new initiatives we were making with the private Bar to further our services. In 1986 and 1985 there were some major developments that came into fruition that were only planned in 1984. In 1985 the State Bar Association initiated its Pro Bono Program, and its panel size now stands at 130 attorneys. That's 130 attorneys throughout the state of North Dakota who have agreed to go on record, so to speak, taking calls from the State Bar Association to represent clients that have been screened through Legal Services programs without charging a fee. And there have been attorneys who have spent many, many long hours in taking many cases, in many instances very many aggravating cases, and represented the clients very well. And for this we are very thankful. Because it has helped us supplement what we're trying to do.

There's also been some concern that since the funding cuts Legal Services is cut back to the point that maybe it isn't doing anything at all. And since the media picked up so well yesterday, although there is no media here today, on Chief Justice Erickstad's statement that there are probably 125,000 people in the state of North Dakota who are low income and who need legal services, I thought I would just take about a minute and a half to give you some statistics. In 1986 Legal Assistance of North Dakota, this isn't including the other legal services programs, which are smaller, but which contribute a significant amount, closed out 3653 cases. I don't consider that an insignificant number of cases. A lot of what we do now is advice and counsel. We don't have as many attorneys on staff, but we supplement what we're doing with attorneys we contract in private practice, and attorneys who take pro bono cases. And we started a new project, which you may have heard of in the past week called the Saturday A.M. Bar here in Bismarck in which government and corporate attorneys have donated their time to start providing advice and counsel to our clients on the weekend. We do this the second Saturday of each month.

Another comment I hear quite often is that we don't do family law cases anymore. And that's not correct. The highest percentage of cases that Legal Assistance of North Dakota does, and most legal services programs do, is family law cases. But because there are so many family law cases we've narrowed what we do. And we do contested custody, and we do domestic violence issues, whether it's a divorce or protection order. But the second highest number of cases we do is in public benefits. And the reason why that is, is there are not a lot of private practitioners out there that do public benefits cases. And it's an area where it really doesn't pay private practitioners, with the exception possibly of Social Security, to get into that area of law unless you want to do a lot of it and do it consistently.

Another reason I think why there's a preception that either we're not doing services or maybe there really isn't any need out there is the fact that we have not been advertising. Legal Services programs have not been advertising as aggressively as we were in the late '70s and early '80s. In the late '70s and early '80s legal services were receiving increased funding and were building the size of their staffs and ability access to client population. In the '80s that hasn't been true. We know the clients are out there. And I can tell you that in 1983 3363 people contacted Legal Assistance of North Dakota. And we have to turn them away because we just didn't have the resources to serve them. Not because they weren't financially eligible, but because their cases were in those classifications that we just didn't have the resources to handle. So I know there's a need out there. We're going to make a renewed effort this year, even though we haven't had increased funding, to let more and more clients know about our services and to work even more fluently with the State Bar and increase the size of the Pro Bono panel even more to try to serve more people.

Now that I've finished with the statistics I'd just like to talk very briefly about the three things that I happen to have been involved with tangentially that have been very exciting. First, as Joel Gilbertson reported to you, the

passage of IOLTA. One of the three major activities for which IOLTA funds can be used is for the provision of civil legal services to the poor. And the IOLTA rule, again which was drafted basically by the State Bar Association, North Dakota Bar Foundation, placed at high priority in its rule on services to low income persons. That's very exciting. And that shows a true commitment to me of the Bar of North Dakota and the Judiciary to try to address this problem as best we can.

The second was the creation of the Supreme Court Special Committee on the Delivery of Legal Services to the Poor and the work that those committee members have done. I am not a member of that committee, I have been fortunate enough to be able to sit in on a number of their meetings, and it's a small number of people, but they are very dedicated. They ask a lot of good questions, and they have forced us in the legal services communities to try to provide them answers to the questions they are asking. I'm looking forward to their report.

The third I guess I had a little bit stronger hand in, and that was President Widdel's formation of a Legal Services to the Poor Committee. Or maybe I should say the reinstitution of that committee. For some of the members of the Bar that have been around for over thirteen years there was such a committee which was disbanded I think in '74 or '75.

The committee started out as a seven-member committee and is now turned into a joint committee; one-third of which is appointed by the State Bar Association, one-third of which is appointed by the Supreme Court and one-third of which is appointed by the legal services community. I think this is a very significant step to show that there are major issues to be addressed. The committee has only had one meeting so far. That was on April 20th. And I am a member of that committee by virtue of being in the legal services community. Melvin Webster of Bismarck was elected Chair of that committee. He's in private practice here. And he's also a State Bar appointee to the Supreme Court Special Committee on Legal Services and is Vice-Chair of that committee. It was the intention in the future that when this committee makes reports to you, and hopefully that the Chair of that committee will continue to be a private practitioner, but since I had not had a chance to address the Bar for three years the committee asked me to inform you of their composition and of their interest and of their Chair and to bring you up to date on their activities, the next meeting of this committee will be in the late summer or fall. The committee is going to develop an action plan, purposes and goals, the primary one of which is to keep the Bar and the Judiciary informed of what's going on in Legal Services and some of the major issues that you're going to be seeing and that Legal Services programs are facing. Not things that are unique to Legal Services practice of law always, things that could affect the general practice of law. And I think that's one of the things that many private practitioners don't realize; that a lot of the restrictions that are being placed or trying to be placed on Legal Services attorneys are restrictions on the practice of law generally.

To give you an idea of what I consider the ridiculous types of statements that are coming out of Washington from a Legal Services Corporation, which is our private primary funding source, is the statement that Phil Johnson, your ABA delegate, told you about in the Bar Journal just a couple of months ago, and that is that Clark Durrant, the Chairman of the Board of Directors, stood up before the ABA Board of Governors and stated that all in the practice of law should be deregulated. After all, it worked for truckers and it worked for the airlines — certainly it will work for Legal Services. He also said that simple cases such as custody matters really didn't need a license to practice law. You don't really need that much experience. When you have somebody like that, albeit in the Legal Services communities, but who is a private practitioner and recognized in the state of Michigan, his home state, I think it implies that all of the Bar should be concerned about statements like that.

Another one of the issues that the Joint Committee is very interested in and will be pursuing is the concept of mandatory pro bono. And that is a concept that has been explored by the Supreme Court Special Committee. In fact, Douglas Herman of Fargo spent quite a bit of time developing a proposed mandatory pro bono plan. The plan has also been titled "The Workable Plan" and "The All Lawyer Plan" for Legal Services. And of course it's been very controversial. The concept has been run by the Board of Governors. The Supreme Court Special Committee decided tentatively at least not to adopt this plan as a recommendation in its report. But it is something that the Joint Committee is going to be looking at very closely and discussing very closely. It's a controversial issue. It was very controversial when it was brought up at the ABA ten or twelve years ago. But it is something I think that is worthwhile looking at in North Dakota, and it's something that doesn't have to be a threat, but basically can be reflecting what many of you are doing already in your private practice. There's no question in most people's minds that most private practitioners do an extensive amount of pro bono work. They just don't get recognized for it. And perhaps somewhat down the road there would be a role for this kind of a concept even if it isn't right now.

So I'm hoping that within the next couple of years with IOLTA with the Joint Committee of the State Bar, with some discussions on major issues, that Legal Services and the rest of the legal community can continue to work together hand in hand. That we can compliment what each other is doing and keep the lines of communication open. And that we can do what I've said in my other presentations, and that is make equal access to the justice system a reality in the state of North Dakota.

Thank you very much.

(Applause.)

PRESIDENT WIDDEL: Thank you, Linda.

Next item on the agenda is a report on the status of the Specialization Plan by Wally Hankla, Chair of the Committee. Wally.

(Applause.)

MR. WALFRID B. "WALLY" HANKLA: Thank you, Mr. President.

If you'll recall, I think you disbanded the committee. So whether I'm still a chairman or not, I'm not sure. I was asked to make this report by Jack because I believe that there is some action that is necessary at this Bar Convention concerning the specialization plan. If you will recall, in 1984 in Dickinson the Association approved a Specialization Plan to be submitted to the Supreme Court for its adoption as a rule. At the time that this was going on the Court through its Attorney Standards Committee and its subcommittees was also studying the changes that they were making to the Code of Professional Responsibility to promulgate the New Rules of Professional Responsibility which was done, adopted by the Bar Association, as reported by Chief Justice Erickstad yesterday, and will become effective in January of 1988. I mention that because we had a situation where to some extent our Specialization Plan clashed with what was being done concerning the Rules on Professional Responsibility.

So we went last August to the Executive Committee and recommended that the Specialization Plan, "We" being the Specialization Committee, recommended that the Specialization Plan be withdrawn from consideration by the Supreme Court for reasons which I'll get to in a minute. And the Executive Committee did that last September. Now in the intervening time since the plan was adopted the Committee has been doing some work concerning particular areas of specialization that might be looked at in testing the waters for interest in those

types of things. But the end result was we're recommending that the Plan be withdrawn from consideration by the Court and, in effect, tabled. Primarily for two reasons: The committee at least perceived that the main target of the Specialization Plan, though there be other worthy reasons for such a plan, was advertising, untoward advertising, if you want to adopt it that way. It's the feeling that the way the Plan would have to operate now in the light of legal decisions and the New Code of Professional Responsibility is that the Plan would have very little impact in the area of controlling advertising.

Secondly, the feasibility of the Plan from the standpoint of financial support is gravely in doubt. With reference to the workability, the problem is that the cases which have addressed the right of a state to control an individual lawyer's advertising have indicated that it must be done, if it can be done at all, in the least restrictive manner. The Supreme Court Committee on Attorney Standards in adopting the New Code of Professional Responsibility has established a standard that prescribes false or misleading communications. It was the feeling of the Committee when it was approached by the Attorney Standards Committee, saying, "Hey, we've got to dovetail these some way." That we would be placed in the position if anybody tested our Specialization Plan it would in all probability be thrown out, because you have the standard of false or misleading advertising or false or misleading communications which is a less restrictive means of insuring truth in advertising, and therefore the specialization prohibitions would probably not be able to be enforced.

So for those reasons primarily it was suggested that the Specialization Plan could be changed to adopt what they call the Texas Rule, which would mean that possibly the plan would prevent itself from attack by providing that if a lawyer was certified, I'm going to use the word "certified," it's not right, but was certified by the Specialization Committee, he could advertise that he is certified in a certain field. But that you couldn't prohibit a lawyer from advertising that he is a specialist in or his practice is restricted to that same field even though he be uncertified as long as that lawyer would put in fine print in his advertisement something to the effect that, "Not certified by the State Bar Association of North Dakota." So what you really would wind up with would be if somebody went through the certification process, his advertisement could say "Recognized by the State Bar," and then the other lawyer could advertise in the same fashion and then just have a little disclaimer that said "Not recognized by the State Bar." It was perceived by the Committee that the public wouldn't discern the difference between the two. And therefore we've gone through a lot of work, probably exposed the Bar Association to suit, and expended a lot of money, and not accomplished very much. Probably just as importantly we have not been able to find now, even three years later, a state with a Bar the size of North Dakota which has funded and operated a plan like this.

We do know that in those states where they are operating certification plans successfully they are running into a lot of problems in a certain area where they want to certify people in one designated field and there aren't many people interested in serving in that field. They are having trouble because they can't get the fees from the applications to operate the plan within those fields where there is not a large demand. I'm talking about states like California that say, "Gee, we only had 200 people that want to be certified in a certain area. We don't think we can certify them, run the testing, police certification, with that few applicants." Well, the Committee sent out a circular asking for indications from Bar members who might want to be certified in different fields. The heaviest report or the heaviest response was from estate planning and probate. And I think that there were eight that indicated that they would like to be certified in that field. And so it looked to us as if we were into a financial situation where how are you going to make the plan work? And particularly in light of the result probably not amounting to very much at all. The result was we came to the Board and said, "Why don't we just withdraw the plan?" Not to say that there are not some things that should be looked at by the Bar Association. There are a group of lawyers that were rather vocal in their feeling that aside from, for example, controlling advertising, they would like to know when they are consulted by a particular client concerning a field that they don't know anything about, they would like to know that there is a pool of lawyers over here who are apparently competent in that field, and that they could therefore somehow refer their client to such lawyers without fear of incurring malpractice as a result of their referral to somebody that drops the ball.

There are some areas that can still be looked into by the Bar. But we felt that this particular Specialization Plan in light of the New Code of Professional Responsibility should be withdrawn. And I guess if it's in order, Mr. President, I would move that the Specialization Plan as adopted by this body in June of 1984, be withdrawn from consideration by the Supreme Court and be tabled for lack of a better term.

PRESIDENT WIDDEL: Thank you, Wally, for a very complete report. Is there a second to that motion?

MR. WALLACE GOULET, JR.: Second.

PRESIDENT WIDDEL: Any further discussion on the motion? All those in favor of tabling of the Specialization Plan and withdrawal from the Supreme Court consideration signify by saying "Aye." Those opposed signify by saying "Nay." Motion's carried.

The next item on the agenda is an item we've added. It's not on the written agenda. Russ Robinson who is in charge of ABA membership, requested time on the agenda. Is Russ present?  
(Applause.)

MR. RUSSEL G. ROBINSON: I've just completed my first year as ABA State Membership Chairman and felt it appropriate to give a report on the status of ABA membership within the state of North Dakota.

Carla Smith serves as the Young Lawyers Division Membership Chairman for the ABA along with me. I had to fill the shoes of Randy Lee in taking the position, which are large shoes to fill. Not so large as they used to be.

The status of membership right now on ABA membership is that there are 668 members of the American Bar Association from North Dakota. In the past year we have improved from seventeenth to eleventh position in ranking for a percentage of membership in the American Bar Association among our lawyers. I have a goal of acquiring forty new members in the coming year, which would put us in approximately fourth position.

I would like to point out to you the low cost of joining the American Bar Association. If you're a first-year lawyer, there is no fee to join the American Bar Association your first year, and you get \$10,000 of term life insurance for joining, which is about as good a bargain as you can find. For those who have been in practice less than six years cost is \$40, for those in practice less than ten years it's \$80. I think it's money well invested in something, in an organization, that's watching over your practice. There are a number of financial benefits that I won't detail here today. But if you're interested in joining the American Bar Association please contact Carla Smith or me and we'll be happy to get you an application.

One further comment that I think is helpful to a lot of individuals is there is a Firm Billing Program through the American Bar Association which allows the firm to be billed directly for ABA membership dues. If your firm is

not currently on the ABA Firm Billing Program please inquire about it and get your firm on the Firm Billing Program.

Thank you.  
(Applause.)

**PRESIDENT WIDDEL:** Following the agenda, next item is Reports of Standing Committees and Sections. There are printed materials in your convention handouts. At this time we would like to save some time. So if there is anyone present that has not made a report that would like to, we would consider that at this point. Is there any member or chairman of a standing committee that wishes to make a report? Hearing none, we will move along to the announcements. Les, do you have some announcements?

**EXECUTIVE DIRECTOR TORGERSON:** Let it go for now.

**PRESIDENT WIDDEL:** Okay. Next item on the agenda is the consideration of resolutions. The resolutions were read yesterday and are in your book. Is there a request to reread those resolutions? Let's go one by one on them. First resolution that is presented was presented by Mr. Hill. That's on the advance notice of agenda and minutes of the meeting for the Board of Governors. Is there a motion to consider that resolution?

**MR. JAMES S. HILL:** Mr. President. James Hill from Bismarck. And I would move the consideration of the amendment. If it's appropriate I would like to make a few comments at this time.

**PRESIDENT WIDDEL:** Is there a second for that motion?

**MR. KENT A. HIGGINS:** Kent Higgins, Bismarck.

**PRESIDENT WIDDEL:** This is a motion for adoption?

**MR. HILL:** It is.

**PRESIDENT WIDDEL:** You may make your statement.

**MR. HILL:** Mr. President, I have drafted the proposal or the resolution simply on the basis that communication within the Bar Association is to me a very important thing. I would express to you the thought that I don't have the time to go to the Bar office every month to review the minutes of each meeting. We have a publication which comes from our Bar office at least twice a month. I believe less. And I think that there is a need for communication between the Board of Governors and the members of this Association in order to make it function a bit better.

Now I'm going to be a new member on the Board of Governors, yet I don't have a vehicle with which to report to the people within my district unless I use something like a publication from the State Bar office. I think most of the districts are unfounded districts; in other words, I don't think this membership wants another organization to which they pay dues. So the only way that I can report to the South Central Judicial District is to call a meeting, and I'm going to have difficulty getting all of the people there, or I'm going to have to use some vehicle to report to the members of my district. The cost of publication in light of this increased communication I think could only be considered minimal. There are a number of official publications, such as School Board minutes, County Commission meetings, which are all reduced in size. I realize that this may add some cost to the publication costs of the Association. But I think that since the Board of Governors serves the interests of the Association this resolution would provide a very simple means to provide a rather direct service to the members of our Association. And I would urge its adoption.

**PRESIDENT WIDDEL:** Is there further discussion on the motion? Mr. Peterson.

**MR. DAVID L. PETERSON:** Mr. Chairman. I am Dave Peterson from Bismarck. And I stand in opposition to this resolution for several reasons. As the Immediate Past President of the Bar Association I have served on the Board of Governors now for three years. And I think those who have served on the Board of Governors of this Association would probably agree with me that it would be almost impossible for the Board of Governors to operate if they were to have to have their agenda complete and notification of the items on that agenda out two weeks prior to the meeting. There are far too many things that this Association is involved in on a day-to-day and week-by-week basis to have the Board of Governors' hands tied in that fashion. And that's the most objectionable thing I see in this particular resolution.

Mr. Hill says that he does not have the time to go down to the Bar office and read the minutes. He doesn't have to go down to the Bar office and read the minutes. If he wants them he can simply call the office and they will send them out. The budgeting process, Mr. Feste, your President-Elect, will be getting into that later this afternoon, the budgeting process of this Association is extremely tight at this particular time. And the addition of the burden of the cost of printing in the newsletter all of the minutes of the Board of Governors I think is simply something that the Association does not need.

So for those reasons, Mr. President, I urge the membership to oppose the resolution.

**PRESIDENT WIDDEL:** Is there further discussion on the motion? Mr. Feste.

**PRESIDENT-ELECT FESTE:** I'm going to try and turn this microphone around if I can do it with greater dexterity than I can hit a golf ball with sometimes.

My name is Charles Feste. I'm from Fargo. And I'm on the Board of Governors of the Bar Association, and I'm also the President-Elect. And I am before you to speak in opposition of the motion to adopt this resolution. Much of the reasons I have are the same reasons expressed by Dave Peterson; basically with regard to cost. But this raises a lot of questions. In other words, if the agenda were published two weeks in advance then would the Board of Governors be limited to consideration and discussion of those items that are on the agenda? Moreover, there is usually on the agenda other business. Could these other things then be termed "other business" and discussed in any event? There may be some things that have happened this year that give rise to this particularly. But I think that as a general proposition the management of the affairs of the Association are delegated by the Constitution and the Bylaws to the Board of Governors. We elect responsible people to the position of Board of Governors. And I think they should be free to carry out their Constitutional functions without restriction by basis of resolution.

Thank you.

**PRESIDENT WIDDEL:** Thank you, Mr. Feste.  
Is there further discussion? Mr. Hill.

**MR. HILL:** I would just like to make one additional comment. And that is Mr. Feste and Mr. Peterson mentioned the aspect of communication. I realize there is a cost involved in doing what I have proposed to do. And

if there's a problem, and people really believe that it's going to somehow curtail the efforts of the Board of Governors to print an agenda, I will make my own motion to withdraw that portion from this particular resolution.

I think it's critical, however, that this Association see the minutes of the meeting of the Board of Governors. In June of 1986, I wrote a letter to this Board. And I indicated that there was a decision out of New Hampshire regarding lobbying efforts of Bar Associations. I got a response, and they acknowledged the fact that I wrote the letter. By December of that year a study had been done by the Board which no one knew existed except the Board of Governors. There was the adoption of the lobbying policy by the Board of Governors that nobody knew anything about until after the session was in progress. Now it would have been relatively simple for somebody to put something in one of the publications to tell the membership of the Bar that we were going to be launching major legislative efforts. My letter was simply that, "There are a number of tort reform issues which will come before the 1987 legislative session. Here is a case which touches upon it. I would ask that the Board of Governors be sensitive in handling the issue." I didn't hear anything else. Now I think that if the cost is there to print the minutes of the meetings, somewhere along the way that should rank very, very high on the objectives of our Association.

And so that I can take care of at least the problem that Mr. Feste points out, which has been addressed I think by Les and others, that it's impossible to publish an agenda, I will make the motion and ask whoever seconded it to join me in withdrawing the portion dealing with the agenda and concentrate on publication of the minutes of each of the meetings. I don't think that's too difficult. And if there is a cost I think we ought to bear it as an Association.

PRESIDENT WIDDEL: Is that in the form of an amendment, Mr. Hill?

MR. HILL: It is, Mr. President.

PRESIDENT WIDDEL: All right. Is there a second to the amendment to withdraw the word "agenda" from the motion?

MR. RONALD A. REICHERT: Second.

PRESIDENT WIDDEL: Seconded by who?

MR. REICHERT: Ron Reichert.

PRESIDENT WIDDEL: Ron Reichert from Dickinson. Discussion on the amendment?

MR. ORLIN W. BACKES: Question.

PRESIDENT WIDDEL: Mr. Backes.

MR. ORLIN BACKES: I guess I want to speak in opposition even to the amendment. I get so much stuff across my desk for reading I can't see any reason to put full minutes in your Gavel of things that may not be relevant to members. I would hope the Board of Governors and the editor of the paper would put the relevant things in that the Association should know about. But to clutter up our Gavel with more reading material I tell you has no interest to a lot of the members of the Bar. And to put pages of minutes into The Gavel that we have to go through I think is taking a lot of our lawyers' time.

PRESIDENT WIDDEL: Judge Burdick.

JUDGE EUGENE A. BURDICK: I don't think anybody needs the minutes of the meeting. But I think that in general a summary of some important issue ought to be printed in The Gavel or whatever media that you choose so that the Bar can understand what's going on without waiting for the annual meeting. And I'm not sure that the sense of this motion was to include the minutes. I would oppose the including of the minutes, but certainly not a summary of the action taken by the Board. That seems to be a reasonable position to take. And I would support the motion if it's intended to provide information on action of the Board of Governors on a proposition stating it in summary, not showing the minutes of the meeting.

PRESIDENT WIDDEL: Yes, sir.

MR. JOHN C. KAPSNER: My name is John Kapsner, and I'm rising to support the amendment of Mr. Hill. We've gotten to the crux of the problem or the festering sore in this Association quicker than I thought we would today. I think there is a generalized feeling of distrust of the Board of Governors from the members of this Association because of the activities involving lobbying during this year. I think it's important for the members of the Association to be informed of what is going on. I do not believe that this was appropriately handled this year. I don't believe the membership as a whole understood what the Board of Governors was doing. I think that the explanations for what was being done occurred very late; in fact, after the legislative session. And I think it should be up to the individual members of the Association to determine whether or not they believe what the Association is doing is important or not. Or what issues the Association is, in fact, addressing. And the only way that that information will be available to members of the Association in all parts of the state is if there is some centralized means of distributing the information. And at this point in time I believe that The Gavel is the appropriate method. And I believe that the additional expense is well worth it to inform the Bar Association members as to what the Board of Governors is doing.

PRESIDENT WIDDEL: Is there further discussion on the amendments?

JUDGE BURDICK: Mr. President, could we have a reading of the motion now as it is now constituted?

PRESIDENT-ELECT FESTE: Last portion.

EXECUTIVE DIRECTOR TORGERSON: You want the entire motion, Judge?

JUDGE BURDICK: Yes.

EXECUTIVE DIRECTOR TORGERSON: Just the last portion, the Whereas? Just the motion. Now, therefore, be it resolved by the General Assembly —

JUDGE BURDICK: Not the whereases.

EXECUTIVE DIRECTOR TORGERSON: Now, therefore, be it resolved by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting June 10th through 12th, 1987, that whenever possible at least —

PRESIDENT-ELECT FESTE: No.

EXECUTIVE DIRECTOR TORGERSON: — that in any event the official minutes be published at all times

within thirty days of each meeting of the Board of Governors in the official publication of the Association.  
That's the way I understand it.

JUDGE BURDICK: I'd have to oppose that motion or that resolution unless someone chooses to offer an amendment to it to include a summary of the action taken by the Board.

PRESIDENT WIDDEL: Is there further discussion?

Parliamentarian has pointed out, this is what I had indicated earlier, that we are at this point discussing the amendment, which is the deletion of the reference to "agenda" in the motion. Is there further discussion on the resolution?

SBAND MEMBER: Question.

PRESIDENT WIDDEL: Question is called. All those in favor of the amendment to delete the "agenda" reference signify by saying "Aye." The amendment is passed.

PRESIDENT-ELECT FESTE: Now the motion.

PRESIDENT WIDDEL: Is there any further discussion on the main motion? Mr. Goulet.

MR. WALLACE R. GOULET: Yes. I'm Wally Goulet. And I had the privilege of serving on the Board of Directors a couple of years ago. And I think as just a very practical matter my recollection is that we had a number of financial reports that were included with our minutes that we approved. The minutes themselves were five, six pages a time. And I guess I would be inclined to definitely agree with Judge Burdick that a summary would be all that would be important for communication purposes. To send out, you know, upwards of ten pages of material to each of the members I think would be really impractical. So I would support the concept of at least a summary, but nothing more.

PRESIDENT WIDDEL: Want to make a motion to amend that matter?

MR. GOULET: I guess I would be glad to make that amended motion to request that a summary rather than a full text of the minutes be put out. And just an offer of a little support to that, that if from your review of the summary of those minutes you decided you wanted to know more of the actual full particulars then you could call in to the Board or the office here to get the full text. And I think that would save us both space and would provide communication as is requested by Mr. Hill on the present issue.

PRESIDENT WIDDEL: Is there a second to the amendment for summary.

JUDGE BURDICK: I'll second it.

PRESIDENT WIDDEL: Seconded by Judge Burdick. Is there discussion?

MR. BACKES: I have one further concern; within thirty days. I'm not sure The Gavel comes out within thirty days after each meeting. And to restrict to have to publish The Gavel to do that I think we're putting a bunch of regulations in that we don't need. That's what the motion says. I'm opposed to it.

PRESIDENT WIDDEL: Is there further discussion on the amendment to the motion? All those in favor of the amendment signify by saying "Aye." Those opposed signify by saying "Nay." Motion is carried to the amendment.

Judge Burdick.

JUDGE BURDICK: Point of inquiry. How often is The Gavel published?

PRESIDENT WIDDEL: It's published every two months, sir.

JUDGE BURDICK: And may I ask also would it be a burden to publish it once in thirty days.

PRESIDENT WIDDEL: It would completely change our format at this time. We have just revised the procedure, tried to present a more professional magazine or booklet to our membership. And this has been the format that has been decided and has been well received at this point since the first of the year.

JUDGE BURDICK: So far as legislative action is concerned it probably wouldn't assist any lawyer who questioned the wisdom of the action taken by the Board of Governors on a legislative matter to get that position known thirty days after they've done it. By that time the legislature has probably adjourned. But it seems to me it would be helpful if the Board could disseminate its action on pending legislation a little bit faster than once in sixty days.

PRESIDENT WIDDEL: The Board this year did make information available in The Note Pad on a regular basis. And this was published as acquired. It was not limited by time. Les, you want to make a comment on that? Just for your information.

EXECUTIVE DIRECTOR TORGERSON: The only comment I would make is that both publications are sent Third-Class Mail. And frequently that will take as long as ten days or two weeks from the time we mail it to get out. If we're bound to provide those things within thirty days there are some practical problems in getting the booklet together, getting it in the mail, and getting it in your hands within thirty days.

JUDGE BURDICK: Does the resolution call for The Gavel only or may other media be used, such as The Note Pad?

MR. HILL: Official publication. And I think they are both official publications.

JUDGE BURDICK: It's not restricted to The Gavel?

MR. HILL: No. I would move that the thirty-day period be stricken from the resolution.

PRESIDENT WIDDEL: All right. Is there a second to that motion?

MR. HILL: In the next available publication of the Association.

PRESIDENT WIDDEL: Is there a second to that amendment?

MR. JACK McDONALD, JR.: Second.

PRESIDENT WIDDEL: Seconded by Jack McDonald. Now is there further discussion on the amendment?

SBAND MEMBER: Question.

PRESIDENT WIDDEL: Question is called. For the benefit of everyone, and the Chair, I'm going to ask the amended motion be read.

PRESIDENT-ELECT FESTE: Just eliminate the thirty-day provision.

EXECUTIVE DIRECTOR TORGERSON: NOW, THEREFORE, BE IT RESOLVED by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting June 10th-12th, 1987, that a summary of the official minutes be published in the next available publication of this Association.

PRESIDENT WIDDEL: Is there discussion on the motion as amended? All right. All those in favor of the amendment signify by saying "Aye." Those opposed signify by saying "Nay." The amendment's carried.

At this time we will vote on the main motion. All those in favor of the motion as amended signify by saying "Aye."

JUDGE BURDICK: I think you have a lot of "whereases" now that aren't relevant. And it might reflect a statement of position that is inconsistent with the amendments that were adopted. And I would move that those irrelevant "whereases" be deleted, especially those that deal with the agenda in advance of the meeting.

PRESIDENT WIDDEL: What have we got for the "whereases?" Are they in conflict with the motion?

PRESIDENT-ELECT FESTE: Ask for a second.

MR. DWIGHT C.H. KAUTZMANN: Point of order. Point of order is that you've already called for the vote. You've already got an "Aye" vote on the floor. You have yet to call for the "Nay" vote. Under point of order I'd now ask you to call for the "Nay" vote.

PRESIDENT WIDDEL: Thank you, Mr. Kautzmann.

JUDGE BURDICK: Have about fifteen feet to travel here before I could be heard.

PRESIDENT WIDDEL: I'm going to call you out of order, Judge, until we complete the vote.

JUDGE BURDICK: All right. I think there are several people out of order here.

PRESIDENT WIDDEL: The Chair is in doubt. I would request that all those in favor signify by saying "Aye." Those opposed a sign of "Nay." Motion is carried.

Next resolution is the resolution that was proposed by Murray G. Sagsveen. Is there a request that the motion be reread? At this time the Chair would entertain a motion to consider the resolution.

MR. MURRAY G. SAGSVEEN: Mr. President, I move that this organization adopt the resolution as submitted.

PRESIDENT WIDDEL: Is there a second to the motion?

MR. JAMES S. HILL: Second.

PRESIDENT WIDDEL: Seconded by James Hill.  
Discussion?

MR. SAGSVEEN: Mr. President, for the reasons which have been stated in a two-page memorandum that I've distributed previously, I've offered the resolution. But I wish to restate just a few of those reasons. This is an integrated Bar Association. And if we want to practice law in North Dakota we must be a member of this Association. It is my understanding that there is no General Assembly policy governing the lobbying of the Association. And the present Board policy contemplates no membership involvement in the legislative program. That the legislative program is set by the Board upon the recommendation of the Legislative Committee. The Board had an extensive legislative program this session on issues not specifically germane to the Board's or to the Bar's stated purposes. And individual members of the Association have no role in selecting a majority of the Board. That is because the Board members are selected from the individual districts.

Another reason is that the Federal Courts have ruled in other states that integrated Bar Associations should limit or must limit their lobbying activities to issues which are germane to the Bar Association's purposes. And I cite, for example, the case of *Gibson vs. The Florida Bar Board*, 798 F.2d 1564; a 1986 case from the 11th Circuit. I objected to the Bar Board about the lobbying in the past session. My request was rejected. But a Board member suggested that I bring the issue up here today. That's why I introduced the resolution. Why should we adopt this resolution? I don't believe that seven Board members should establish a legislative policy of the State Bar Association of North Dakota, especially when the majority of the Bar members are not selected by the individual Board members. And I believe that the State Bar Association of North Dakota should not be taking special interest positions before the legislative assembly, rather the State Bar Association should equally represent all factions of the membership, whether they be judges, trial counsel, defense counsel, public attorneys, corporate counsel or others. The State Bar Association should focus on issues germane to the Bar.

I believe that several things may happen if the Board continues to lobby on issues not germane to the Bar. It could jeopardize the integrity of the integrated Bar. Legislation could be introduced to terminate the present status. But, probably more important, I believe it could lead to power plays for control of the Bar Board. The question will be which special interest could control the Bar Board for the purpose of lobbying at the next legislative session?

And, finally, I think that the Bar Board and the State Bar Association exposes itself to liability if a member wants to sue challenging that the Bar Board has violated an individual member's civil rights. Therefore, I urge that the members present adopt the resolution.

PRESIDENT WIDDEL: Is there further discussion on the motion for adoption of the resolution? Mr. Peterson.

MR. DAVID L. PETERSON: Thank you, Mr. Chairman. I rise—

PRESIDENT WIDDEL: Mr. Peterson, the Court Reporter has requested that you speak this way.

MR. DAVID PETERSON: All right. I think that's the better side anyway.

PRESIDENT-ELECT FESTE: Wants to read your lips.

MR. PETERSON: I rise in opposition to this resolution. And Murray and I have been friends for a long time. Murray, I can't help but commenting you can't even use the word "plaintiff." You used "trial counsel" and "defense counsel." Anyway.

MR. SAGSVEEN: I have been in the Army too long.

MR. PETERSON: Seriously, Mr. Chairman, I think that I will beg the group's indulgence for just a moment. I

was a member of the Board of Governors, as I said, the last three years. And I was also Chairman of the Legislative Committee during the last session. And I would like to point out to the membership how we went about the lobbying efforts that were made by the Bar Association, because there has been some discussion about it, and I think there's been a fair amount of misinformation about it. In the first place, there were probably 1300 or 1400 bills that were introduced into the session. The procedure that we used was we asked Les and the staff to go through all of the bills and pick out those which would be of interest to lawyers in general. So that's what they did. Those bills were then given to me as Chairman of the Legislative Committee. And we then had several meetings of the Legislative Committee it was determined by that Committee that we would send all of the tort reform bills on to members that are on the Committee attended each and every time. But we had members there at each of those meetings. What we then did is we'd go over the business that Les and the staff had pulled. And some of them we just simply didn't bother with any further. Some, we were charged by the Board with making recommendations to them as to a position to be taken on the bills by the Association. The area of the law which seems to have created a controversy here has been the so-called tort reform area. With respect to those at the first meeting of our Legislative Committee it was determined by that Committee that we would send all of the tort reform bills on to the Board of Governors with no recommendation. And the very reason for that was that we felt that they would be controversial and we would send them on to the full Board. Because, in essence, the Board had to approve it anyway. So that's what we did.

My count may be incorrect, but I think there were somewhere in the vicinity of 45 bills introduced that would be called in the framework of tort reform. And they ranged from everything for immunity for soil conservation district supervisors, to House Bill 1571, which covered a broad range of things, such as joint and several punitive damages, the method of pleading and proving and those kinds of things. If anyone in this Assembly believes that the Board of governors did not discuss thoroughly the issues with respect to these bills, they are sadly mistaken. There were members that are not on the Board of Governors who attended some of these meetings. And I remember hours and hours of discussion at the regular Board meetings. In addition, because of the nature of the legislative process, what happened is the first couple of weeks of the session you get just a terrible crunch of bills. And all of those bills came in, in a big glob. And they are drafted by some legislators, they are drafted perhaps by some lawyers back in their districts, some of them are drafted through the Legislative Counsel at the request of the individual legislator. And, frankly, a lot of the drafting is very, very bad. And it doesn't make any sense or makes very little sense. Anyway, in sifting through them we, the Board of Governors, had many hours of telephone conference calls besides the regular meetings. And we then did take positions on certain of the bills.

Murray has issued a memorandum which has been laying on the table here. And there's a couple of things that I want to respond to in there. With respect to his point number one, he talks about House Bill 1045. It is true that that particular bill was opposed by action of the Board of Governors initially. We then had some contact with some lawyers in the eastern part of the state. We asked them to come to the Board of Governors meeting in Fargo. They discussed the information they had with respect to that. Ultimately 1045 was killed. But the concept within 1045 was passed in the so-called Overall Tort Reform Bill, which is 1571. And the major portion of 1045 was a comparative fault situation.

Number two, he talks about the Uniform Marital Property Act. And he says for some unexplained reason the Association decided to oppose the bill. That simply is not the case. The Real Property and Probate Section of the Bar Association had spent a considerable amount of time researching the effect of the passage of that bill. And they looked at the Wisconsin experiences. And this really, it's called a Uniform Bill, perhaps Judge Burdick can tell me, I think the information we had was that probably Wisconsin was the only state that had passed it. But really the Uniform Bill has not been passed anywhere in total, has it, Judge?

JUDGE BURDICK: That's correct.

MR. PETERSON: So, anyway, the position of the Board, after a great deal of discussion, was that we would have Mr. Paul Hubbard, who serves on the Real Estate, Probate Section of the Bar go to the Legislature and explain the ramifications of the bill. And after we had heard all of the ramifications of the bill it was our opinion by majority vote that the Bar go on record in opposition to the bill. Certainly we aren't in opposition to uniform rights or anything like that. But that particular bill it was our opinion would have been a bad bill for the state.

With respect to the dramshop comment in Paragraph number three that particular bill was a repeal of the dramshop law as we knew it. The ultimate resolution of that issue in House Bill 1571 is that now dramshop has been repealed and there is a negligence cause of action specifically stated against bar owners. So we've got a negligence cause of action. Clearly articulated in the new law. So we aren't without a cause of action against a bar owner. There was a divergence of opinion by the lawyers in looking at the bills as to whether or not if 1027 passed and there was a total repealer of the dramshop because of a Supreme Court case whether or not there would be any opportunity to sue a bar even under a negligence theory without some statutory enactment. So that was the reason for that.

In item four, House Bill 1084 was an amendment of I think it's 28-26-01, which 28-26-01 has been with us for a long time, where the Court has in its discretion the authority to levy attorney's fees and costs in frivolous actions. The difference or the proposed change in this particular bill, 1084, was the language says the Court may, the bill said the Court shall. But it really wasn't any change of the bill passed. My opinion still is it doesn't change anything. Because the Court still has the discretion of determining whether or not any fees should be assessed.

On House Bill 1309 concerning joint and several liability it is true we opposed that particular bill. The American Bar Association has done an extensive study on this tort reform issue. And Mr. Feste has with him today a copy of that if anyone would like to see it. One of the recommendations of the American Bar Association, and that is what was adopted by the Board of Governors, was that, yes, indeed, joint and several might need some looking at. There was a modification of it, not a total elimination of it. That was the position the Board took. Is that we would be better off adopting a modification of joint and several rather than total elimination of the concept. Because it would be unfair to plaintiffs under that particular concept. The House Bill 1309 was defeated. That is true. However, the concepts of joint and several liability were included in 1571. And after July 1 there is no longer any joint and several liability in the state of North Dakota. They did not adopt the American Bar Association's view of it. They simply abolished it.

It is true on Item six that the Board of Governors did oppose House Bill 1085, which was a proposed limit on noneconomic damages. It was the position of the Board of Governors that given the statistics that we have in North Dakota, and we undertook a study of the last ten years of civil jury verdicts in this state, and we had all of that information on a county-to-county basis, and it was our considered opinion by majority of the Board that in North Dakota we simply should not place limits on noneconomic or economic damages in this state. Because our juries, we believe, based on the information from our study, was that they are being reasonable in their awards. So we did oppose that. And that bill was defeated.



On number seven Murray talks about statute of limitations. And there were a variety of statute of limitation bills in the legislature. And it ranged from changing the statute from six years to four years to two years. One of them was relating to dramshop. And I think that had a provision which said they were reducing it to two years. However, it had a ninety-day notification. Ninety days after the accident you had to notify the Attorney General that you were going to sue the bar. Well, that was a little silly. Why would you notify the Attorney General that you were going to sue the bar. And, in essence, it was a ninety-day statute of limitations, because if you didn't make the notification there was no cause of action. The position of the Board of Governors, we discussed generally the concept of statutes of limitations, and it was our opinion by a majority vote that statutes of limitations if they are going to be in existence they should be uniform. And that was the position that we articulated at the legislative session.

House Bill 1474 related to the recovery of damages due to intoxication. That's the one that now gives a negligence cause of action against persons who either sell, buy or give away liquor. And there is in that provision in that bill as it was enacted a provision which prevents the personal representative of the drunk, if you will, or an adult passenger riding with a drunk, from recovering damages for any injuries to the drunk. And in reviewing that language it appears to prevent, then, a wife or a husband or a child of that particular drunken driver or a passenger in that vehicle from collecting any damages. And it was our opinion that that was not good language. We can understand I guess why an individual, if he gets intoxicated, goes out and drives and is injured, that maybe he shouldn't have recovery from the bar owner. But should the family be made to suffer as a result of that? And we took the position that that language should not be in the bill. We were unsuccessful. And the bill passed with that language in there. So it remains to be seen precisely what it says.

House Bill 1571, Murray refers to it as "the omnibus tort reform bill." That bill came in under the auspices of the Greater North Dakota Association. It covered a whole host of matters; joint and several, comparative fault, punitive damages and so forth. The bill is almost unrecognizable currently as to what it was when it initially went in. It was amended tremendously. What happened is the House Judiciary Committee used it really as the basis for its tort reform legislation. And they amalgamated a lot of things into it and took a lot of things out of it and kind of brought it out as its flagship. And that's what came through. And there was some material within that bill that was very, very objectionable as it was initially written. It didn't make sense in a lot of ways. And the Association in reviewing it by majority vote agreed to oppose it.

There are other bills which Murray has not mentioned in here, for example, relating to tort reform that the Association supported, one of which was on the concept of punitive damages. There were two bills in on punitive damages, one was this 1085 and one was this 1571. And essentially what they both provided was that in a punitive damage case now when you sue out a case you think you have a claim for punitive damages you cannot sue it out initially. You must sue it out without the punitive damages claim. You then go into your discovery mode. If you determine there are facts to back it up you can then make a motion to amend. And you must establish, and it points out how by *prima facie* facts, that there is a claim for punitive damages. So the Association Board of Governors by majority vote supported that.

And there are others. And I'm not going to go on and on and on. But the point is we didn't just have a knee jerk reaction to these things. I have had some people indicate to me that perhaps because I have been more on the plaintiff's side over the years than on the defense side certainly, and I admit to that, that I was somehow controlling the Board of Governors. I tell you folks look in your registration booklet. And if you think I can control that bunch, you're crazy. It's just that simple. We considered the stuff very seriously. We didn't do knee jerk reactions. I submit to you that it would be a terrible mistake to tie the Association Board of Governors' hands. If you want to simply have the Board of governors with no authority to take any action for the Bar Association of North Dakota, not to have any input into the legislative process of this state, then pass Murray's resolution. If you don't think that that's right, if you think that you want to allow the Board of Governors to exercise their discretion in a reasonable fashion, please vote to kill the resolution.

One of the other resolutions that you will find is one that I have drafted and put in here. I had not intended to do that. But after seeing Murray's resolution quite frankly I wanted to have something that articulated what the Board really did, and that's the one, I don't have my name on it, but it's the last one in your booklet. And it essentially outlines what the Board did in the current or the past legislative session. Murray says that his feeling is that we have had negative feedback from the legislative process. I've not had that. In fact, I've had legislators call me and say, "You were up and explained something or other on this bill on tort reform and so forth. There's a bill here, and I really don't understand what all it means. When you come up to the Capitol next time will you stop by and visit with me about it?" And other lawyers who testified for the Bar Association had that same experience. Folks, that's a good "PR" thing for the Association. I mean it wasn't even related to any of the bills that we were taking positions on. But we had the legislators at least listening to our people who were talking about it. And it was I think, in my judgment at least, a good PR for the Bar.

I'm going to quit now. But, frankly, I would hope you would kill all of these resolutions and allow the Board to operate. But if you want to tie the Board's hands, then vote for Murray's resolution.

Thank you.

PRESIDENT WIDDEL: Mr. Hill, you're next.

MR. JAMES S. HILL: Mr. President, members of the Association. I obviously practice law with Murray, and so we have talked over the last few months about what should be done with respect to this aspect of legislative policy. First of all, I want everybody to know I do have a great deal of respect for Dave Peterson. And I think that I would at least acknowledge a tremendous amount of work that he did during the session carrying through the policies that the Board of Governors created. But that's the problem. What David has given under the circumstances is really an excellent outline of what they did. What I'm concerned about is why did they do it in the first place? In June of 1986, I sent to Les Torgerson a copy of the *In Re: Chapman* case from New Hampshire. My statement was simply I believe it is important for the Association to maintain some degree of neutrality on the issue of tort reform because the members are so divided in their beliefs. Now I didn't get any feedback at that time other than the President of my district, Dwight Kautzmann indicated, "Everybody got your case. And they were interested." Now at that time unbeknownst to me there was no policy for this Association concerning lobbying before a session. Later that same year, and I've discovered this only after the session started, the Bar Association commissioned Central Legal Research in Grand Forks to come up with some type of study to find out whether a legislative lobbying policy might somehow violate First Amendment rights of an integrated Bar member. And I don't know if all of you people have heard of the study. But the answer to the question from the Law School was forced speech or nonspeech violates both the Federal and State Constitutions unless it furthers the compelling government interest imposed by the least restrictive means. In effect, the answer was yes. Now that was in October of 1986. We still didn't have a policy. So all of a sudden the December Note Pad comes out and there is no.

mention in the December Note Pad of any policy. But by that time, as you reconstruct the facts, it was clear that one was being developed. Now I understand what Dave is saying. There are prefiled bills by the hundreds. But in 1985 in the interim committees they were working on tort reform. The President of the United States...I'm sorry, Ron, if I mentioned Ronald Reagan's name....He was screaming, "Tort." The new tort reform was coming. They knew what type of packages were going to be there. At least as late as December 1986 there is no mention to this assembly. "We're going to be going into session talking about tort reform issues." I learned through Les by writing him a letter asking, "Is there a policy?" I learned in mid December a policy was developed. Presumably adopted by the Board of Governors. It wasn't published at that time. But it was adopted. And the first line, the first paragraph, is the policy that we have today, which I believe is the policy that's encompassed in Dave's resolution. It reads "The Legislative Committee of the State Bar Association of North Dakota shall review legislative proposals and shall recommend to the Board of Governors positions to be taken on such proposals. The Board by majority vote shall determine the Association's position on each issue." Now all David Peterson did is follow the directives of the Board. And he went to the legislative session. You can't blame or give him credit for anything. He did what his job was to do. The problem is I think the policy is so broad that we're going to have swings back and forth on this Association level. That it's conceivable the next session we're going to be taken before the very same committees which are constituted by virtually the same people, we're going to take different stands. Now I don't think Murray or anybody else who disagrees with the legislative positions taken would say that lawyers do not belong at the legislative session. They do. Everybody belongs there that has an interest in what is going on. There is no question that Orell Schmitz with the Trial Lawyers has done an extremely effective and good job of what he is to do. The defense industry, the insurance industry, the administrative lawyers, they are all there. And they are doing a very effective job. And I think that's where it should be.

The reference was made to the American Bar Association's positions on this and that, whatever. Well, ladies and gentlemen, this Association, if you don't like what the American Bar Association does with respect to their recommendations, you can resign. I can't resign from the State Bar Association on North Dakota. I have to belong. And I think it does violate the free speech issues in this case. And I think that at the very least the Board of Governors failed to get to their people and find out what the flavor was out there and find out whether they should be incorporating such a broad policy.

As Dave has indicated, you don't want to tie the hands of the Board of Governors going on board. And I'm asking you to tie my hands at least with respect to that issue. Thank you.

**PRESIDENT WIDDEL:** Judge Burdick.

**JUDGE BURDICK:** I believe a Constitutional question was tenured here; that unless the policy of the organization supports the idea of supporting legislation that somehow or other that this can be challenged in the courts. The position of the Bar. I'd like to remind everyone here that all fifty states and the District of Columbia and the Commonwealth of Puerto Rico have all taken positions in the creation of commissioners on uniform state laws to support uniform legislation throughout the United States. The American Bar Association took a position early on, and their number one priority of the American Bar Association, is to promote the uniformity of legislation in the United States. This is not something new. This is a very old, old concept. That Bar Associations do, in fact, take positions on legislation. And I think it ought to be continued. Even though I may be unhappy with action taken by the Board of Governors on certain bills that were introduced I think in time they will be enlightened and they will probably support them. But I don't think we have to wait for a general vote of the assembly for the Board of Governors to present a position at the legislative assembly. I am in opposition to the resolution for that reason. I think someone has to take some action on these legislative proposals. And I think the Board of Governors does the best they can. And generally many speak the then prevailing sentiment of the lawyers of this state. Now if anyone has a proposal that they want to submit, and have more widespread support, they can bring it up for discussion at the Annual Meeting. In fact, I would like to do that with several. But I certainly can't complain if the Board of Governors takes a position on those bills. In fact, I think they should. We should be more involved with the law than certainly the procedural aspects that some states seem to want to limit us. And for that reason I'm very much opposed to this resolution.

**PRESIDENT WIDDEL:** Mr. Feste.

**PRESIDENT-ELECT FESTE:** This isn't going to work if I turn my back to you, Norman, is it?

I rise also in opposition to the proposed motion. First I should say that one of the objectives of the State Bar Association is to encourage cordial relations between members. A second purpose is to promote the administration of justice. I guess it is under the latter provision that the Board of Governors decided to involve itself in legislative matters this session.

Some years ago I served on the revision of the Business Corporation Act. And at that time we went to the Legislative Committee, and very reluctantly the Legislative Committee agreed to support the rather innocuous bill, that is noncontroversial bill, that passed one of the Houses with no opposition and the Senate I believe with minor opposition. It is my personal feeling that it is incumbent on the Bar Association to involve itself in matters that involve the administration of justice. Some of the tort reform issues in my judgment involve the administration of justice. And while it is true that there are some of these issues more sensitive than others apparently it is the sensitive issues that have created some ire among certain members. There are some probably 900 practicing lawyers in North Dakota. With respect to the position that the Board of Governors took, we received approximately five or six letters in opposition to that. I recognize from Jim we did receive his letter early on in June. And that letter was considered. And there was a program undertaken to determine just what other integrated Bar Associations were doing with respect to tort reform. Also the American Bar Association was contacted to determine whether any studies had been undertaken with regard to tort reform and what effect they would have on basically Bar Associations in the administration of justice.

We learned that the American Bar Association did have an Action Committee that had been appointed to study the improvement of the tort system. And it is my personal belief that the matter of the tort system and the insurance system are so interrelated that if there is going to be a revision of one, then there should be a revision of the other. And essentially that became a focal point of what the Board of Governors was attempting to accomplish during the last session. In other words, to expose to the legislature that if you are going to take action on these things let's look at it and improve the entire system. I personally am not opposed to tort reform. And there has been some perception; I heard this morning the speaker talked about reception is basically reality. Perception apparently was that the Board of Governors had capitulated to the position of the Trial Lawyers Association of North Dakota. That I can assure you is not the case. The study, the undertaking that we did, was basically

in defense of that. And it wasn't always majority vote within our group. But we did give thought and consideration. And, as Judge Burdick indicated, I believe it is the function of the Board of Governors to involve itself in matters that pertain to the administration of justice. And I urge you to permit the Board of Governors to continue with that goal. And I ask you to defeat this resolution. Thank you.

PRESIDENT WIDDEL: Mr. Backes.

MR. ORLAN BACKES: Mr. President, I was President of the Bar Association two years ago during the 1985 Legislative Session. I can tell you this resolution would raise havoc with what the Bar Association was attempting to do. We wrote to every legislator prior to the session when I was President telling them that the Bar Association was very careful in taking any positions because we have lawyers on both sides of many of these issues. But there are certain issues that we do have to take a position on. We, in *The Gavel*, asked every lawyer to say if they were interested, meet with legislators. We sent those names to every legislator so that legislators would know lawyers who may be interested in discussing legislation with them. There were seventeen uniform bills that came before us in the session two years ago. Under this legislation we could not have considered or testified in favor or opposed them. I know Judge Burdick and I had our differences on some of those, because we did oppose some of those uniform laws we didn't think fit North Dakota. And I think it's important for our Bar Association to analyze and see do they fit North Dakota? And what changes should be made? The big issue then was doing away with the jury trial in civil litigation. We couldn't argue to keep a jury trial in North Dakota under this legislation. Because there were lawyers who are in favor of doing away with jury trials. And I just don't think it would work without having some aspect, either. I did testify in favor of those things. I think it's important that our Association do this. I can tell you the Board took this responsibility very seriously. I was not on the Board this last session. But two years ago we took it very seriously. And I think there are times that the Board has to take a position and testify. Otherwise I don't think we're doing our job as lawyers.

PRESIDENT WIDDEL: Mr. Kautzmann.

MR. DWIGHT C.H. KAUTZMANN: I wish to support Mr. Sagsveen's motion. And urge you when you vote, however you vote, that this is not about tort reform. More often than not this Association takes positions with which I agree. I think the State of North Dakota and the Bar of North Dakota needs a strong and vigorous Bar Association. What this argument is about, dispute, is whether or not this Bar Association at the bottom of the barrel, at the root, is this going to be an integrated Bar or not? And if this Bar is to remain integrated then we have to limit our lobbying to accommodate political speech and First Amendment rights of each individual member of the Association. The only way it seems to me possible for this Association to take First Amendment rights away from any individual member is to no longer have this Association be an integrated Bar. Now I personally do not like the integrated Bar. That is not relevant. The question is are we going to limit the integrated Bar as it exists to taking positions which do not violate individual members' free speech and political speech rights? Not about tort reform. About political speech. Thank you.

PRESIDENT WIDDEL: Dean Davis, do you want to comment?

DEAN W. JEREMY DAVIS: Mr. President, members. I hesitate to come before you on this or any other controversial issue. But I do take the position even more so in this case because it may be a little presumptuous for me who is not a practitioner to come before you. Nevertheless, I am a member of the Board of Governors. I'm responsible for my conduct and my activities on that Board, as are your other representatives. I'm in a little different position because I'm a representative only by virtue of my office and I'm not elected. Nevertheless, I hope I can be objective. I haven't prepared anything. And I only have a few brief remarks. In the first place, it was I that requested Central Legal Research to do an issue on the Constitutional problem that might be related to this. I think that a statement that that conclusion said that it was a Constitutional violation that the Board of an integrated Bar take a position is incorrect. I think as in all products of research there are differences of opinion. And I respect those differences. Nevertheless, I think that it is absolutely incorrect that someone can stand up here and say that the conclusion was one-sided. It certainly was not. There are some problems with the Constitutional issue here. Those problems I think were resolved to the satisfaction of the members of the Board after reading the product of the research by the return of dues, percentage of dues, that's been in lobbying activities. I think that's a nonissue here. It's an attempt to divert some of the other issues. Thus, I think that we have no free speech problem.

I think that the statement that there was a major legislative effort by the Board is absolutely incorrect. I attended almost all of the meetings in which we discussed legislation. We considered each piece of legislation I think sometimes more than we needed to. And I think we took an objective approach to each piece. If there was any major effort on the part of the Board it was that we should not support change merely for the sake of change without any kind of thoughtful consideration. Mr. Sagsveen in his memorandum said something about taking an irrational study, incomprehensible look at the tort system. I think that's what the Board was trying to do. And we were opposed to change for the sake of change. I think on many instances we supported an interim study to consider whether or not the proposals could be coordinated with any of the other proposals. I believe that the piecemeal response to a perceived tort crisis which was apparent by the forty-four bills, or however many it was in this legislative session, was not particularly a good idea without some kind of coordinated study. And I personally voted not to support bills without the kind of research and study that's needed to determine whether these, in fact, solve what's perceived to be a problem. I plan to vote in opposition.

PRESIDENT WIDDEL: Gentleman in the back to the room there.

SBAND MEMBER: Question.

THE REPORTER: Could I have a couple seconds?

MR. CHARLES S. MILLER JR.: Mr. President, my name is Charles Miller. I'm attorney here in Bismarck. I rise in support of the motion. I just want to make two quick comments. First is that by the passage of this resolution this obviously does not end the involvement of the Bar Association in the legislature. As I read the resolution the representatives of the Bar Association can still go up and legislate even on topics outside the area of the motion and still give educational assistance to the members of the legislature; say that here are some of the arguments for and here are some of the arguments against without stating that this is the position for or against the Bar Association. So I think all these comments that the legislators are going to go without this information are really not valid.

Second point I would like to make is that the Bar Association owes a high duty to its members to be able to lobby effectively on the areas of interest directly affecting the Association. And I think that once the Bar Association starts getting itself involved in the political realm of tort reform and these other areas it then just

becomes one of many other interest groups and loses its effectiveness in lobbying in the areas that have direct interest to the Bar Association. And I think the fact's obvious from the comments that are made around the legislature and elsewhere that, "Well, the Bar Association is in favor of this bill." That's almost the kiss of death. And I think that if we get involved in the political process with the Bar Association as an integrated Bar that we're just lowering the prestige of the Bar Association and its ability to speak on the issues directly affecting the Bar Association. Thank you.

PRESIDENT WIDDEL: Mr. Feder. Chair recognizes Robert Feder.

MR. ROBERT A. FEDER: My name is Robert Feder. I'm from Fargo. I oppose the motion. I think what we've heard today has been a sign that we should become more involved in the Bar Association. Congress passes laws that I don't like you, you don't like. We don't turn in our citizenship. We have problems with what the Board of Governors did or you are afraid of what they are going to do. The solution is to contact our District Presidents to let our views be known, understand what their views are. Through that understanding maybe then the Board of Governors will be more responsive to the needs of the membership. That I think is the solution, not to throw out the bath water and the baby, to abrogate a duty that our Association has. Nobody knows better in areas that affect the administration of justice what is right and what is wrong than our Association. We elect those people to do that job. And I think we ought to let them do it. And with that I call for the question.

PRESIDENT WIDDEL: Motion to limit debate?

MR. ROBERT FEDER: No. I'm calling for the question.

JUDGE BURDICK: That's what it is, a motion to limit debate.

MR. DANIEL J. CHAPMAN: Dan Chapman of Bismarck. I move the previous question.

JUDGE BURDICK: That takes a second.

PRESIDENT WIDDEL: Is there a second to that?

MR. ROBERT A. FEDER: Second.

MR. FLOYD B. SPERRY: Second.

PRESIDENT WIDDEL: Court Reporter get that second?

THE REPORTER: Two.

PRESIDENT WIDDEL: All those in favor of the proposed resolution?

JUDGE BURDICK: Wait a minute. There is a motion to close debate.

PRESIDENT WIDDEL: All those in favor of limiting debate signify by the sign of "Aye." Those opposed the sign of "Nay." Debate is limited.

MR. ROBERT A. FEDER: Question.

PRESIDENT WIDDEL: All those in favor of the proposed motion by Mr. Sagsveen signify by saying "Aye." Those opposed sign of "Nay." Motion's failed.

SBAND MEMBER: Division of the House.

PRESIDENT WIDDEL: Next resolution.

MR. MURRAY SAGSVEEN: Mr. President, I would call for a division of the House.

PRESIDENT WIDDEL: All right. Division of the House has been called. The electors please take their positions.

MR. J. PHILLIP JOHNSON: Have them stand up.

PRESIDENT WIDDEL: We will have all of those in favor of the proposed motion stand, please.

MR. J. PHILLIP JOHNSON: Those in the back sit down.

PRESIDENT WIDDEL: Would those in the back sit down if they are not in favor of the motion? Mr. Holloway?

MR. DONALD R. HOLLOWAY: Yes.

PRESIDENT WIDDEL: You take this side of the House, Mr. Larson take this side.

MR. GREGORY C. LARSON: Which side?

MR. HOLLOWAY: I get 17 on your side.

MR. LARSON: I get 24 on mine.

MR. HOLLOWAY: I get 17 on this side.

MR. LARSON: 24 over here.

PRESIDENT WIDDEL: Would you be seated, please? Those opposed to the motion please stand.

MR. LARSON: 46 on my side. Including myself.

MR. HOLLOWAY: And 33 over here without myself. 34.

PRESIDENT WIDDEL: Resolution has failed.

MR. JAMES S. HILL: What's the vote?

PRESIDENT WIDDEL: 41 in favor, 79 opposed. We will recess for about five minutes. (Whereupon, the proceedings were recessed from 3:24 to 3:38 p.m.)

PRESIDENT WIDDEL: At this time we will call the meeting back to order.

Continuing with the resolutions to be considered by the Association. Next resolution is the proposal by James Hill.

MR. JAMES S. HILL: Boy, I really hesitate to get up here. After you get kicked down enough you're supposed to learn.

PRESIDENT WIDDEL: Chair would entertain a motion.

MR. JAMES HILL: Mr. President I would move the adoption of the resolution that has been proposed. I do have one change that I would...

PRESIDENT WIDDEL: Just a minute. Is there a second to Mr. Hill's motion?

MR. MICHAEL G. LIFFRIG: Second.

PRESIDENT WIDDEL: Second by who?

MR. LIFFRIG: Michael Liffbrig, Bismarck.

MR. HILL: I think the resolution which you all have I do have a notation or the indication that the vote of the General Assembly would be reversed only by two-thirds vote of a subsequent General Assembly. I have been approached by a number of people asking that I amend my own resolution by making it a simple majority, which would suggest that a majority could be overruled by simple majority at a subsequent vote. I would accept that as an amendment. I would comment very briefly on the reasons for making this resolution.

PRESIDENT WIDDEL: Just a minute. I think we're going to have to act on your amendment.

MR. HILL: Why don't I make the amendment at the end of my comments, then I'll make the motion.

PRESIDENT WIDDEL: All right.

MR. HILL: The Constitution of this Association makes no provision whether a vote of the General Assembly can be overturned by a majority vote of the Board of Governors. Now my personal belief is that should not happen. If this General Assembly approves some act it should not be subsequently overturned by a Board of Governors' vote. Now I will readily admit that my review of the Constitution and the Bylaws was prompted by the position the Board of Governors took with respect to House Bill 1677. First time I saw what I perceived to be a change of position was the Bismarck Tribune's report that the bill went through committee after the State Bar Association reversed its position on the matter of the Intermediate Appellate Court. Now I have talked to a number of people since that time. I have read Les Torgerson's report in the latest Gavel, there have been explanations by other Board members, all of which have suggested to me that the position was really not changed or reversed, but was simply a vote on an aspect of the proposed bill which they considered had never been presented to the General Assembly. Be that as it may, it still prompted the fact that the Constitution and Bylaws allows the Board of Governors to reverse a position that is taken by the General Assembly. The fact that there is that omission in our Constitution which would allow that to happen I would think would require some action by this body. I would move the adoption of the resolution with the change, Mr. President, of deleting reference to "two-thirds vote" to "a simple majority."

PRESIDENT WIDDEL: Is there a second on the amendment?

MR. JOHN C. KAPSNER: Second.

PRESIDENT WIDDEL: Please rise and identify yourself.

MR. JOHN KAPSNER: John Kapsner.

PRESIDENT WIDDEL: Is there a discussion on the amendment? Are you speaking to the amendment now?

PRESIDENT-ELECT FESTE: No.

PRESIDENT WIDDEL: All right. Is there any discussion on this amendment? All those in favor of the amendment signify by the sign of "Aye." Those opposed a sign of "Nay." Amendment is carried. Is there further discussion on the main motion as amended?

PRESIDENT-ELECT FESTE: Mr. President, I'm Charles Feste of Fargo. I am troubled by two parts of the proposed resolution. By his own admission Mr. Hill indicates that this is a modification of the current Constitution and Bylaws. And I believe there are some provisions within both documents that provide for how they can be amended. If this, in effect, amends it then I submit that it's improper.

PRESIDENT WIDDEL: Is there further comment on the motion as amended?

MR. KENT HIGGINS: Mr. Chairman, would it be too much to ask that the essence of that resolution be read as presently amended so some of us know what you're talking about?

PRESIDENT WIDDEL: All right. Motion will be read as amended.

EXECUTIVE DIRECTOR TORGESON: Motion reads WHEREAS, the State Bar Association of North Dakota is an integrated Bar which is composed of all persons licensed by the Supreme Court of North Dakota, and which is governed by an elected Board of Governors, and

WHEREAS, the Constitution of this Association is unclear as to whether a vote of the General Assembly of this Association can be overturned by a subsequent vote of the Board of Governors, and

WHEREAS, since the Board of Governors stands as the elected representative body of this Association it should not in principle be able to override a direct vote of the General Assembly.

BE IT THEREFORE RESOLVED by the General Assembly of the State Bar Association of North Dakota at its Annual Meeting June 10th through 12th, 1987, that a vote of the General Assembly of the State Bar Association of North Dakota on any issue cannot be reversed or modified by the Board of Governors and that such vote can be modified or reversed only by either a subsequent majority vote of the General Assembly at an Annual Meeting or by a majority vote of the Association through mail ballot called for by a majority vote of the Board of Governors.

PRESIDENT WIDDEL: Is there further discussion on the motion as amended? Will you come forward to the microphone?

SBAND MEMBER: I don't want to speak. I just want to raise a question. What are you amending, the whole Constitution, or a section and paragraph, and why, Mr. Hill, why is he so confused what it says?

MR. HILL: I am not confused at all. I'm not proposing to amend the Constitution. I just want it very, very clear to the Board of Governors the General Assembly of this Association rules on an issue or point, don't overrule them period. I don't think that's confusing.

PRESIDENT WIDDEL: Is there further discussion on the amended resolution? All those in favor of the resolution as amended signify by saying "Aye." Those opposed signify by saying "Nay." Chair is in doubt. All

those in favor signify by saying "Aye." Those opposed signify by saying "Nay." Motion's passed.

Next resolution is a resolution proposed by Mr. Peterson.

MR. DAVID L. PETERSON: Mr. President. Dave Peterson from Bismarck. I would move at this time to withdraw the resolution which is in the book. I feel that by virtue of the vote on Mr. Sagsveen's resolution that it's unnecessary to have this one. I simply, as I indicated then, had proposed this so that this body would see what the Board had essentially done during the last session. And I think that by the defeat of Murray's resolution, I don't know, but I would assume that the Board as it will be constituted may proceed on the same basis.

It's my perception, as I had served on the Board, that they do listen to the comments of the membership. I think the discussion here today has been healthy. Appreciate Murray's views and Jim's views and everybody else's views. And I think the Board will be even more sensitive in the future than they have in the past. I think that's good for all of us. I would withdraw this resolution, Mr. President.

MR. MURRAY G. SAGSVEEN: Mr. President, may I second that motion?

MR. JAMES S. HILL: I'll third it.

PRESIDENT WIDDEL: Hearing no objection, and it being seconded that there be a withdrawal of the motion, motion is granted.

There is one further resolution. Mr. Schultz.

MR. ALFRED SCHULTZ: I have one other resolution, and it reads as follows:

WHEREAS, the members of the State Bar Association of North Dakota have enjoyed the unselfish work and efforts of those who have contributed towards the enjoyment and success of the 87th Annual Meeting of the State Bar Association of North Dakota;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the members of the State Bar Association of North Dakota assembled at their 87th Annual Meeting that this group express its thanks and appreciation to the following persons and entities:

First, to Sherry King, Assistant Executive Director for her work on behalf of the local committee on facilities and arrangements.

Second, to Merle Peterson, President of the Burleigh County Bar Association, and members of the Burleigh County Bar, for the contributions made by these dedicated members towards arrangements, facilities and the program for the members of the Bar as well as the spouses and guests;

Third, to Candy Schafer and Bismarck-Mandan Legal Secretaries Association for their contributions toward the success of the program, and particularly with their assistance with registration;

Fourth, to the law firm of Pearce, Anderson & Durick of Bismarck for their generosity in sponsoring the reception for the North Dakota Bar Foundation on Tuesday evening;

Fifth, to Norman E. Mark, Official Court Reporter for the proceedings, for his generous contributions towards the success of the athletic events and the bridge tournament and legal run around;

Sixth, to the sponsors of Legal Expo for their contributions towards the success of our program.

Seventh, to the First Trust Company for their sponsorship of the Annual Meeting family breakfast on Friday morning.

Eighth, to Legal Assistance of North Dakota and its Director, Linda Catalano, for the interesting and outstanding CLE program presented on Wednesday, June 10th;

Ninth, to John E. Widdel, Jr. and Yvonne Widdel for their hard work and sacrifices which they have undertaken during the past year to contribute towards the success of the programs of the State Bar Association of North Dakota;

Tenth, to Les Torgerson and the other members of the Association staff who have worked long and hard to present a successful Annual Meeting program;

Eleventh, to the members of the Executive Committee and the different committees of the Association which have contributed so much during the past year towards creating and carrying out a successful program of benefit to the members of the legal profession, the judiciary, and all of the citizens of the state of North Dakota.

Mr. President, I move the adoption of the resolution.

PRESIDENT WIDDEL: Is there a second?

MR. FLOYD B. SPERRY: Second the motion.

PRESIDENT WIDDEL: Second of the motion, Mr. Sperry. Discussion on the motion? All those in favor of the motion signify by saying "Aye." Opposed signify by saying "Nay."

Motion is carried.

That brings us to the end of the resolutions to be considered by the Assembly. At this time I would call on Charles Feste, President-Elect of the Association, for the Association budget for 1987-88.

PRESIDENT-ELECT FESTE: Thank you, Mr. President. In your book if you will please refer to the tab marked "Financial Reports and Budget" the last set of pages in that tab are the proposed budget for the fiscal year 1987-88. Basically going through that lists in three columns the 1986-87 budget, the experience with regard to those line items for 1986-87, and the proposed 1987-88 budget. You will note that there is an anticipated amount of income in the sum of \$472,700. As Les can explain to any of you who have specific questions, it is always difficult to anticipate precisely the amount of income that the Bar Association is going to have. It's perhaps a little more easy to indicate the amount of expenditures. But we have analyzed this and with reasonable accuracy anticipate that we will have \$472,700, and that's what our expenditures will be.

I might just make a note that the figures in the middle column perhaps are a little misleading because of the method of changing the receipts for the annual dues. They don't come in at one time as they used to. And so there are still monies coming in during the month of June.

I would ask at this point before I make a motion are there any questions that any of you have of me concerning the proposed budget for 1987-88?

MS. CAROL KAPSNER: Carol Kapsner from Bismarck. As I read these previous budgets we have got an overdraft and we have got a loss. Does the budget anticipate picking that up?

PRESIDENT-ELECT FESTE: We don't have the figures. You mean looking at the balance sheet?

MS. KAPSNER: And the proposed expenditures for this year.

PRESIDENT-ELECT FESTE: I'm going to have to refer that question to Les. Because I can't answer it specifically.

EXECUTIVE DIRECTOR TORGERSON: The projected budget does not estimate making up the projected loss in this year. We had some expenditures for capital additions, a computer system, for one, some unexpected expenses in terms of unemployment insurance payments which we had to make, and some others that were unexpected losses in this past year. We've projected a balanced budget for the next year. And the budget does not project picking up that deficiency.

PRESIDENT-ELECT FESTE: Are there any other questions?

Mr. President, I would move the adoption of the budget as proposed in the booklet with a budget of \$472,700.

PRESIDENT WIDDEL: Is there a second?

MR. FLOYD B. SPERRY: I'll second.

PRESIDENT WIDDEL: Discussion on the motion?

MR. ROBERT E. DAHL: Question.

PRESIDENT WIDDEL: All those in favor of the adoption of the budget for 1987-88 signify by saying "Aye." Those opposed signify by saying "Nay." Motion's carried.

Would the gentlemen appointed for the election pass out ballots, please?

One announcement for the young lawyers in attendance. Carla's requested that there be a meeting up here at the left side of the podium, over on this side, after we have completed the Assembly meeting.

EXECUTIVE DIRECTOR TORGERSON: Want to do the President first, Jack, then Secretary?

PRESIDENT WIDDEL: Secretary.

JUDGE EUGENE A. BURDICK: Want to tell us who we're voting on?

PRESIDENT WIDDEL: The first ballot will be for Secretary-Treasurer.

SBAND MEMBER: Mr. President, will you announce again the candidates and the position that's being voted on?

PRESIDENT WIDDEL: The ballot at this time will be taken for the position of Secretary-Treasurer. The candidates are by alphabetical order: Gregory Bickle and Carla Kaluzniak Smith. Does everyone have a ballot? Please pass your ballots to the aisles so that they will be easier to collect. While the Election Committee is tabulating the ballots at this time we will consider a motion on the position for President-Elect.

MS. DENAE KAUTZMANN: Mr. President, members of the Association. I'm DeNae Kautzmann from Bismarck. and I move that a unanimous ballot be cast for my brother Dwight Kautzmann for the position of President-Elect. Thank you.

(Applause.)

PRESIDENT WIDDEL: Is there a second to that?

JUDGE H. F. GIERKE III: Second.

PRESIDENT WIDDEL: Seconded by Judge Gierke. Is there any discussion on the motion?

MR. DANIEL J. CHAPMAN: Is there any possibility we could substitute her for him?

(Applause.)

PRESIDENT WIDDEL: Is that in the form of a motion?

MR. DAVID L. PETERSON: Mr. President, I think there should be one clarification before you folks vote on this. When we were going through the budget at our last Board of Governors meeting we had asked Les to put together the budget for the annual meeting. And there was an item on the budget that was of some concern to us, and it was about a \$600 item for tent rental. And the question was raised, "What is this tent rental that we're budgeting for the Annual Meeting?" And whereupon Dewey immediately said, "On the off chance I should be elected as President I may need a tux."

PRESIDENT WIDDEL: Is there further discussion on the motion? All those in favor signify by the sign of "Aye." Those opposed "Nay." Motion is carried. Congratulations, Dewey.

(Applause.)

PRESIDENT WIDDEL: There a motion to make it unanimous?

Is there any other business to come before the Assembly?

I have one other announcement. Red Mass to be held at St. Mary's after the assembly adjourns. Anyone have a story they would wish to tell?

MR. ROBERT E. DAHL: Red Mass starts in half an hour. Let's get out of here.

MR. JAMES S. HILL: Drawings?

PRESIDENT WIDDEL: What was the question?

MR. HILL: Who won the drawings?

PRESIDENT WIDDEL: For the grill, I announced that earlier.

MR. HILL: I didn't get my tickets for the White Mountain deal.

MR. ROBERT E. DAHL: Les Torgerson got first.

PRESIDENT WIDDEL: Tellers are recounting the ballots. The ballots have been counted. The winner is Greg Bickle.

(Applause.)

PRESIDENT WIDDEL: The vote is 61 to 59.

MS. CARLA KALUZNIAK SMITH: Mr. President, I'd like to make a motion that the record reflect that a unanimous ballot be cast for Mr. Bickle.

PRESIDENT WIDDEL: Is there a second to that motion?

MR. FLOYD B. SPERRY: Second.

PRESIDENT WIDDEL: All those in favor signify by saying "Aye." Those opposed signify by saying "Nay." Motion is carried.

MS. JUDITH ATKINSON: Division of the House.

PRESIDENT WIDDEL: At this time is there any other business to come before the assembly? Hearing none the Chair would entertain a motion to adjourn.

JUDGE EUGENE A. BURDICK: I so move.

PRESIDENT WIDDEL: Second?

MR. FLOYD F. SPERRY: Second.

PRESIDENT WIDDEL: Those in favor of the adjournment signify by saying "Aye." Opposed? Motion is carried.

Thank you all for attendance this afternoon.

(Whereupon, the proceedings was adjourned at 4:08 P.M.)

#### FRIDAY, JUNE 12, 1987

(Whereupon, the proceedings reconvened at 7:25 P.M. as follows:)

PRESIDENT WIDDEL: May we have your attention, please? May I have your attention, please?

My name is Jack Widdel. As President, on behalf of the North Dakota State Bar Association I wish to welcome you to the 1987 Annual Meeting.

To begin this evening's activities I would call on Father Albert Leary, Pastor of the Christ the King Church in Mandan, North Dakota, for the invocation.

FATHER ALBERT LEARY: Before I begin I want to express my gratitude for the opportunity to be with you for a few moments tonight. I'm grateful because I see a number of familiar faces whose friendship association I've enjoyed over a number of years. And I also asked your President-Elect if you were all prayed out, because most of the time these conventions begin frequently with all kinds of prayer sessions. And he said there hadn't been too much. So I hope that you can join me now as we lift our minds and hearts to the Father in prayer.

Psalms 67. Oh God, let all the nations praise you. May God have pity on us and bless us. May He let His face shine upon us. So may your way be known upon earth among all nations your salvation. May the nations be glad and exult because you rule the people in equity, the nations on the earth you guide. May the people praise you, oh God. May all the people praise you. May God bless us. And may all the ends of the earth fear him.

Let us pray, almighty and ever living God, your spirit has made us your sons and daughters, confident to call you Father. Increase your spirit within us. Bless those who are called to the Bench and the Bar to serve God's people and assure them the blessings of equity and justice in the light of the Constitution, which 200th anniversary we celebrate this year. We ask this blessing on all of those called to the legal profession and all of those who support it. And we ask you to bless us tonight and the food we are about to receive through your bounty through Christ our Lord. Amen.

PRESIDENT WIDDEL: Thank you, Father.

Please enjoy your meal.

(Whereupon, the proceedings were recessed from 7:28 to 8:23 P.M.)

PRESIDENT WIDDEL: May I have your attention, please? May I have your attention, please?

At this time I know that many of you have not finished your dinner, but in order to have our awards and the entertainment and still have this completed at a reasonable hour I think it will be necessary that we begin.

At this time I would like to introduce the head table. Chief Justice of the Supreme Court of North Dakota, Ralph Erickstad.

(Applause.)

PRESIDENT WIDDEL: His wife Lois gives her regrets as she is required to be at a meeting in Minot for the Lutheran Church that is under revision. So she has expressed her regrets of being unable to attend.

Charles and Carol Feste, President-Elect of the Association.

(Applause.)

PRESIDENT WIDDEL: Dwight Kautzmann, the newly elected President-Elect and his wife Karen.

(Applause.)

PRESIDENT WIDDEL: Our new Secretary-Treasurer, Greg Bickle and his wife Judy.

(Applause.)

PRESIDENT WIDDEL: Our Executive Director Les Torgerson and his wife Marsha.

(Applause.)

PRESIDENT WIDDEL: And my very patient wife Yvonne.

(Applause.)

PRESIDENT WIDDEL: And you have already met Father Leary. He left.

At this point it is time to make the presentation of awards. I would like to call on Tom Dickson to give a delayed award for the tennis tournament. While he is coming up here, this evening I was preparing to come into the meeting. And I was stopped by a very concerned lady in the hallway. Not in the hallway, but on the way here. And she asked if I was nervous before I would speak before such a meeting as this. I said, "No." I said, "I do speak before many groups. And I very seldom am very nervous." "Well," then she asked, "why are you in the ladies' room?"

MR. THOMAS A. DICKSON: Most of you are probably wondering why the tennis players are the only sports group that are receiving their awards at the official end of the meeting. There are probably a couple reasons for that. First of all, we had several Judges who played in the tournament and they refused to leave town without having their athletic prowess recognized by their colleagues and peers. And, secondly, any Judge who dares wear a pair of shorts in public probably deserves to receive his award at the Annual Meeting. In any event, I would like to read the names of the winners of the various categories and just have them stand. And they can all come up to



the podium at the same time. In the doubles competition the runner up was Joe Cichy and Jerry Gunderson of the Wheeler-Wolf firm from Bismarck, North Dakota. I know Joe's here. Joe, stand up, please.

(Applause.)

MR. DICKSON: And the winners in the doubles competition were Howard Swanson of Grand Forks and Dick Olson of Minot. I know Howard's here.

(Applause.)

MR. DICKSON: And in the advanced singles competition, probably a sign of the times, but a lawyer did not win the tournament this year. The runner up in the advanced singles was Dan Vogel. And Dan had a prior commitment, so he forfeits his trophy. It goes to Phil Johnson. But the winner of the singles event was Norman Mark. Norman is right here, so he will get his. I know Phil Johnson is here, too. Phil, where are you? All right. And in the most important category, because we heard that the Judges won the golf tournament, too. But the tennis tournament got rained out the first day. So this put a lot of stress on us who were playing it, because the Judges have to have some awards. So we held the tennis tournament on Thursday at 2 o'clock at the Apple Creek Tennis Courts. And I ran into Judge O'Keefe after the Judge Davies luncheon. And I said, "Judge, I'm sorry that you're going to have to miss the tennis tournament. I know the Judicial Conference started at 1:30. And Judge VandeWalle runs a very taut ship and you're going to have to be there." He said, "Look, kid, you're not my mother. I came here to play tennis." I lived near Walsh County, so I've got to go back there sometime this summer. So the runner up in the Judges category goes to Judge Medd of Grand Forks. Judge Medd is still here, I know. And I know Judge O'Keefe is here. And he won the Judges' category. Judge O'Keefe, where are you? Come on up. Everybody come up.

(Applause.)

PRESIDENT WIDDEL: The next awards to be presented are the 50-Year Awards for service in the profession.

First award is to Harold M. Hager of Mesa, Arizona. Judge Hager here?

(Applause.)

PRESIDENT WIDDEL: Judge, my pleasure to give you this.

JUDGE HAROLD M. HAGER: Thank you, Jack.

PRESIDENT WIDDEL: Judge has requested a correction on the record. He's of Grand Forks, North Dakota.

(Applause.)

PRESIDENT WIDDEL: Next award is to Daniel S. Letnes of Grand Forks, North Dakota.

(Applause.)

PRESIDENT WIDDEL: Congratulations, Dan.

MR. DANIEL S. LETNES: Thank you.

PRESIDENT WIDDEL: Next award is to William L. Paulson, Detroit Lakes, Minnesota. And picking up the Judge's award is Chief Justice Erickstad.

(Applause.)

PRESIDENT WIDDEL: Robert Q. Price from Langdon, North Dakota.

(Applause.)

PRESIDENT WIDDEL: Myer R. Shark from Fargo.

(Applause.)

PRESIDENT WIDDEL: John H. Tebelius from Harvey.

(Applause.)

PRESIDENT WIDDEL: Congratulations.

MR. JOHN J. TEBELIUS: Thank you very much. The initial is J.

PRESIDENT WIDDEL: Oh. Excuse me. Misprint. Sorry.

Mr. Tebelius has informed me that there's a misprint. We have the certificate correct, John J. Tebelius, rather than John H.

Frank J. Woell, Casselton.

(Applause.)

PRESIDENT WIDDEL: My pleasure at this time to provide Recognition of Service Awards to the Board of Governors who were retiring at this meeting.

Duane Breittling from Fargo.

(Applause.)

PRESIDENT WIDDEL: Paul W. Jacobson from Williston.

(Applause.)

PRESIDENT WIDDEL: Dwight Kalash of Grand Forks.

(Applause.)

PRESIDENT WIDDEL: They've really retired.

Dwight Kautzmann from Mandan.

(Applause.)

PRESIDENT WIDDEL: He will be on next year.

David L. Peterson from Bismarck.

(Applause.)

PRESIDENT WIDDEL: And Carla Kaluzniak Smith from Bismarck.

(Applause.)

PRESIDENT WIDDEL: Congratulations.

MS. CARLA KALUZNIAK SMITH: Thanks, Jack.

PRESIDENT WIDDEL: Lay member of the Disciplinary Board, Charles R. Volk, M.D. of Bismarck. And he indicated he would not be able to attend.

Lay member of the Judicial Conduct Commission Nathan Paul Goodiron from Mandaree.

Lay members of the Judicial Nominating Committee, P.L. Altringer from Dickinson. He also indicated he would not be able to attend.

Jay C. Schultz from Bismarck. He is unable to attend.

The next award was presented at the committee breakfast earlier in the week. The Outstanding Committee Chair Award this year was presented to Rebecca Thiem Benson from Bismarck.

(Applause.)

**PRESIDENT WIDDEL:** Another special award was given by the President this year to David L. Peterson for his service on the Legislative Committee.

(Applause.)

**PRESIDENT WIDDEL:** The Pro Bono Publico Award is awarded to Paul F. Ebeltoft, Jr. from Dickinson. He was unable to be here.

(Applause.)

**PRESIDENT WIDDEL:** Another award under that category is Carl O. Flagstad, Jr. from Minot.

(Applause.)

**PRESIDENT WIDDEL:** Also a Pro Bono Award for Monty Mertz from Fargo.

(Applause.)

**PRESIDENT WIDDEL:** The next award is the Liberty Bell Award. This award was established in 1972 and is given to a nonlawyer in recognition of community service which strengthens the effectiveness of the American system of freedom under law.

Criteria for the award, number one, to promote understanding for our form of government.

Number two, to encourage greater respect for law and the courts.

And, third requirement, stimulate a deeper sense of responsibility on the part of citizens regarding their duties as well as their rights.

Past Liberty Bell Award recipients are Hal Davies from Minot in 1972, Harold Refling from Bottineau 1973, John Hjelte from Bismarck 1974, Agnes Geelan from Enderlin 1975, Herman Stern from Valley City 1976, Frank Wenstrom 1977, Lloyd Omdahl 1980, Lois Vogel 1981, Evan Lips 1982, Brynhild Haugland 1983, Harold Schafer 1984, Dr. Douglas Wills 1985, Luella Dunn 1986.

And the 1987 winner for the Liberty Bell Award is Harold Porter from Minot, North Dakota.

(Applause.)

**MR. HAROLD PORTER:** Say a few words here. Just wanted to thank you very much. I want you to know that it is very highly appreciated. And part of this, of course, should go to my wife, Edith. And my daughter Carol is here, also, tonight. And I want to thank you very much again. Thank you.

(Applause.)

**PRESIDENT WIDDEL:** Mr. Porter has been active in so many areas. It is very, very fitting that he would be a recipient of this award for his civic activities, his activities in his church, Boy Scouts and Cub Scouts, PTA, Chamber work, and many, many areas of special interest to his community and to the state.

The next award, the Board of Governors' Distinguished Service Award. The award was created in 1980 by the Board of Governors of the State Bar Association. It is the most prestigious award given by the State Bar. The award, which is not given every year, honors a member of the profession who has understandingly served the state and legal community over an extended career. The Distinguished Service Plaque Award hangs outside the courtroom of the North Dakota Supreme Court and is intended to permanently honor recipients and remind us of their dedication and work.

Prior recipients were the Honorable Ronald N. Davies 1980, the Honorable Eugene A. Burdick 1983, Robert E. Dahl 1984, Richard H. McGee 1985, the Honorable Douglas B. Heen in 1986.

This year's recipient has been a President of the North Dakota Bar Association, has been active in the North Dakota Bar Foundation, in many, many areas of the committees that are functioning within the Bar Association. He is Chairman of the Attorney Standards Committee and the IOLTA Committee. Is a Fellow of the American Bar Association. A member of the American College of Probate Council. The winner is Lavern Neff of Williston, North Dakota.

(Applause.)

**MR. LAVERN C. NEFF:** I was hoping that as I walked up here you would have noticed that I walked with a sprightly step which would indicate that I think I'm too young to receive this award. But, Mr. President, and members of the Board of Governors, distinguished guests and colleagues of the Bar, and ladies and gentlemen, I am sincerely appreciative and quite humbled to have been chosen as the recipient of this Association's Distinguished Service Award. My first thought on being informed that this had happened to me was that if I'd been on the Selection Board I would have chosen someone else. And then my second thought was how do you say, "Thank you to your peers who you believe have recognized you when you're still too young and also have not fully deserved the honor that they have given to you?" But as I look over this room I see and I recognize many members of this Association, Judges and practicing lawyers, who have contributed a great amount of time to making our Association the best or one of the best Bar Associations in the country, and also our state's judicial system one of the best and most accessible to our citizens. There are also many members who are not here this evening of whom the same could be said.

As a young lawyer two Past Presidents of this Association, Arley Bjella and Frank Jestrab, two persons so different in style and in temperament, but so alike in their belief that each of us as a lawyer has an obligation, underlined, an obligation to give of his or her time to improving our profession and our legal system as well as an obligation to return to our communities and state some of the benefits which each of us receives. They reinforced this obligation in me as a young lawyer. And for me it was contagious. There are many other members of our profession that are here this evening who I think also stand tall in our profession in my opinion in this regard. And I hope also in the minds of you.

I would hope that it is contagious for you, as it was for me, and if it's contagious that it also pass from generation to generation. Because as lawyers we can never really leave our clients' concerns in our offices at the end of the day, nor should we leave the improvement of our legal system always to others. We carry our responsibility and the great tradition of the law with us twenty-four hours a day. I was reminded of this some years ago when I got a post card from Frank Jestrab sent from London, England, while he was there for an ABA convention. And it showed the Tower of London. And on the reverse side he had scribbled in his own inimitable hand

the words, "This is where Queen Anne's lawyers lost her case." And that's the way we should be. Because as we look at the institutions, regardless of how old or where they are at, lawyers have had a part in building those institutions if they endure. For lawyers, and I assume for Judges as well, there are both good days and then there are days that are probably not so good. For me this is not only a good day, but it's really one of the best. But the rewards are always greater than the frustration. But in closing I would just like to say that the sweetest of all rewards is a gesture of esteem from those whose good opinions you value. And this award is one of those this evening. I want to thank you. I treasure it. And I hope that it will always be a constant reminder to me, as it will. That I share it with many of you. And that over the years I shall strive to continue to earn it. Thank you very much.

(Applause.)

**PRESIDENT WIDDEL:** This is a very special time for me. I some days have been very anxious to get to this point and other times there have been occasions when I wish it would never come. But at this time I would like to present the State Bar Association gavel to Charles A. Feste. He will be a most capable leader. I wish him a most successful year. And may he and his wife enjoy the year as much as my wife and I have enjoyed it.

(Applause.)

**PRESIDENT FESTE:** Thank you very much. My first official function is to call Jack Widdel and his wife Yvonne back up to this podium. So, Yvonne, will you come up here? You have heard some things that have been said this evening. But I want you to know that Jack Widdel and his wife Yvonne, who Jack referred to as ever patient, have dedicated a year, or more than a year, but the immediate past year as the President of the State Bar Association of North Dakota. I'm sure I speak on behalf of most of you, but to you, Yvonne and Jack, we're most appreciative of your dedication and the service that you have performed. And in recognition of that we'd like to present to you this plaque which you can place in that new home of yours in Grand Forks or in Jack's office, wherever you chose, in recognition of the service that you have given to the State Bar Association of North Dakota. Thank you very much.

(Applause.)

**PRESIDENT FESTE:** One of the prerogatives of an incoming presiding officer is to make a few comments. And we still have a few minutes before the entertainment is to start, so I'm going to make some comments. The first thing that I would like to do is to acknowledge that team work is an important part of the endeavor of any person. And I have had that teamwork with my wife Carol. And I would like to recognize her and thank her for the support she has given me and for the support she will give me in this upcoming year.

(Applause.)

**PRESIDENT FESTE:** I would also like to acknowledge the support and the work that has been done by the Board of Governors in the past year and in anticipating the support that I will receive from the Board of Governors in this oncoming year. Along that line I would like to announce that the first meeting of the Board of Governors will be at 8:30 tomorrow morning in one of the lower rooms, Augsburg, below the swimming pool. And Dewey Kautzmann and I were talking about this a few minutes ago. And we concluded that, to Jim Hill, realizing that President Reagan is out of the country that you may want to call Edwin Meese and consult with him before you attend that meeting tomorrow morning to get a few tips from him.

**MR. JAMES S. HILL:** I've already got my orders.

**PRESIDENT FESTE:** We heard today from one of our speakers that this is truly a great and noble profession. I recognize that and I'm sure all of you recognize that. And I have an opportunity to tell a couple of war stories, so to speak, about that. I'm reminded of an incident that occurred a number of years ago. I was a fledgling lawyer. And I had the privilege of attending the political convention of one of our political parties. Arley Bjella was the Chairman of that committee. It was a particularly long, grueling session. I think that we were on something like the 18th ballot for one of the nominations. And a young lawyer, he was young at that time, from Bismarck made a motion in an attempt to get a break in the meeting so that there could be a caucus. And the Bismarck delegation apparently felt that they could take some steps to change some features. And the motion, I don't remember what it was, but anyway during the course of that, Arley Bjella ruled. And Burt turned to him and said, "Mr. Chairman, I'm scared." And the Chairman, Arley Bjella, said, "If you don't think that the Chairman has been feeling that same way for the past hour or so you've got another thing coming." But those are the kind of things, the dedication of lawyers, inside the profession and outside that have made this a great and noble profession.

I also would like to pay additional tribute to those recipients of the 50-Year Service Award. They also have contributed to make this a great and noble profession. And I would like to single out perhaps in that sense Harold and Harriet Hager, because while I was a student at the University of North Dakota my first connection with a law firm was being a clerk for the firm that Harold was in at that time.

Now coming to the portion of our meeting which also personifies that this is a great and noble profession, I would like to introduce the entertainment. This is a group of professionals, lawyers, from the Chicago area, all members of the Chicago Bar Association. They have been performing in the manner that they are going to perform tonight, not the same group, but the Christmas Spirit, for sixty-eight years. That in itself is quite an accomplishment. There are a number of luminaries within the organization. And I would like to point out that one of the members who is not here tonight is the President of the Chicago Bar. Another member is Fred Lane, who is the Immediate Past-President of the Illinois State Bar Association. And, incidentally, Fred Lane is the author of a book, a treatise, entitled "Medical Litigation Guide." And, Fred, you will owe us some royalties for that little plug for your book.

I would like at this time, then, to introduce the Director of the Christmas Spirit presentation, Mr. Len Rulen to take over from here. Welcome, Len.

(Presentation by the Christmas Spirit.)

**PRESIDENT FESTE:** Who says there isn't talent outside of the courtroom and the office as far as the legal profession is concerned? Weren't they great?

(Applause.)

**PRESIDENT FESTE:** I thought for a moment that they had recruited Orell Schmitz when I saw that fellow with the hair and the white uniform, but then I realized his hair wasn't curly enough.

There's another group that I would like to give some recognition to that has given me a lot of support over the years and are most generous in their advice. Has something to do with humility. That's the group of my mid '50 classmates from UND that are sitting down here.

(Applause.)

**PRESIDENT FESTE:** Aside from that the meeting is adjourned until Minot in 1988. And we wish you a safe journey home and Godspeed. Thank you very much.

(Applause.)

(Whereupon, the proceedings were concluded at 10:30 p.m.)

